

CONSTITUENT ASSEMBLIES OF THE WORLD

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BY

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THE MADRAS LAW JOURNAL OFFICE

MYLAPORE, MADRAS

1947

Price Rs. 6.]

[Postage extra.



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**DEDICATED**

TO

ALL THE MEMBERS OF THE CONSTITUENT ASSEMBLIES  
OF INDIA

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## PREFACE

On the suggestion of my friend, Mr. V. Subramania Iyer, B.A., B.L., Advocate, *Editor*, "The Federal Law Journal," Madras, I agreed to the publication of the subject-matter of this booklet in the form of articles in that Journal. After their publication, some of the leading constitutional lawyers of Madras advised me to bring it out in book-form with the additions necessitated by the lapse of time. Encouraged by this, I have made bold to issue the matter in book-form, in the hope that this maiden attempt of mine with all its shortcomings on such an important subject will be indulgently received by the public at large and by our Politicians, Legislators and Lawyers alike, and that it would serve as an incentive for further research and study in this new field. Needless to say any suggestions for the betterment of the book would be most gratefully received.

I am bound to tender my heartfelt thanks to the *Editor*, "The Federal Law Journal," Madras, for permitting me to reproduce the articles in this book-form and also for the many valuable suggestions given and for having seen the book through the press. It was by the courtesy of the Editor of *The Hindu* that one of the articles published in that Journal has now been incorporated in this book.

My thanks are due to Mr. N. Ramaratnam, M.A., B.L., the Proprietor and Publisher of "The Madras Law Journal" for the readiness with which he agreed to publish this book and for the prompt and efficient manner in which it has been carried out.

T. S. VENKATARAMAN, B.A., B.L.,

*Advocate.*



# CONSTITUENT ASSEMBLIES OF THE WORLD.

## INTRODUCTION.

The object of this publication is to furnish the reader with an outline of the history of the most important constituent assemblies in the world. It is not a history or presentation of constitutions but only of constituent assemblies, although incidentally and necessarily, reference is made to the nature of the constitutions produced by them. India is in the process of being transformed from colonial status into an independent commonwealth. The people of India are called upon to shoulder the responsibility of establishing their own government based on popular will and a constituent assembly on the western model is already engaged in drawing up a new constitution for her. Our minds will have to be concentrated on the task of devising free political institutions of a permanent and stable character, with a view to ensure both order and liberty, and unity and autonomy. At such a juncture, the study of comparative politics and of ancient and modern constitutions is of special importance. In all countries which established new constitutions either after revolution or through evolution and negotiation, there was an intense study of political institutions, past and present and there was a great intellectual outburst in that direction. In the field of politics, it is difficult to devise or invent new patterns or models without the aid and guidance of the institutions adopted in other countries and in other ages. Hence, a survey of the history and achievements of the various constituent assemblies of the world will serve a timely and useful purpose. It will be of great value to the student, the historian and the politician and to all those engaged or interested in the art of constitution-making. In the proceedings and history of these bodies, there are many parallels to the problems that confront us and the solutions adopted by them for the many complex and intricate questions will throw some light which may enable us to solve the difficulties with which we are faced in similar situations.

Constituent assembly is a western political contribution to the science of government. It was first conceived and adopted in the state of Massachusetts in the United States of America in about 1780, after the American Declaration of Independence. It was then copied by the Philadelphia convention (1787) which drew up the modern United States Federal constitution. The eulogy which greeted this great constitution led to the universal adoption of this.

political machinery for framing new constitutions through popular representatives. It has thus become now a well-recognised democratic method for such a purpose. Its origin and growth is to be found in the United States of America and in countries which subsequently followed this device.

The term constituent assembly signifies a representative body chosen for the purpose of considering and either adopting or proposing a new constitution or changes in an existing constitution. It is a special body with a special procedure. It has nothing to do with ordinary Legislature or the normal functions of government. It is called for the sole and special purpose of establishing the fundamental organic law of the State.

It is characteristically an American institution. Almost all the written constitutions of the world have been framed by constituent assemblies or conventions as they are called. So far as England is concerned no such special body was called to frame the constitution. The British constitution is an unwritten and flexible one and its source cannot be traced to any particular document. It is contained in Acts of Parliament, usages, precedents and conventions. It consists both of statute and common law. Here Parliament is supreme and there is no distinction between constituent and legislative functions as in other countries like America. Constitutional changes are brought about in the same way as ordinary legislative business. The British Parliament can make and unmake its laws in the usual ordinary way.

The essential characteristic of the constituent assembly is that it derives its authority from the sovereign will of the people. It is based on the principle that the constitution should be framed by the people. This is done through its real representatives. Again, its powers are unlimited and coeval with those of the people. It is a sovereign body, and does its work in a peaceable and unfettered way after mature deliberation. In this process, compromise or the spirit of political accommodation plays a vital part in resolving intricacies and deadlocks. Further, the composition of the constituent assembly should be an ideal one. It must reflect the wisdom, culture, talent and statesmanship of the nation and also the varieties of interests, thought, temperament and different and even conflicting points of view. Finally, the constitution framed by such a body should be submitted to the people for ratification. These ideals and principles are often realised and given effect to in diverse ways and through different channels. Sometimes they are only implied in the methods adopted. The practice is not uniform and is often varied but these fundamental ideas constitute the basic philosophy on which the constituent assembly rests.

Although the constitution is to be drawn up by such a general assembly, mostly the work is done by smaller Committees with division

of functions. The part played by constitutional lawyers and experts is great and decisive.

Generally conventions have been called by provisional governments or congresses which seized power after revolution or to whom it was transferred after negotiation. In the case of the Dominions of Canada, Australia and South Africa the position was somewhat different. In these the federal or unitary movement led to the calling of the constituent assemblies. In the States of America, and the United States, in Ireland, in France and in almost all countries during post-war Europe after 1918, provisional governments as mentioned above, generally undertook the task of calling constituent assemblies to draw the constitution.

The introduction of the constituent assembly for framing the future constitution of India is a right course. When England had to recognise the independence of Ireland, it was this machinery that was adopted by the terms of the Irish Treaty of 1922, for establishing the new constitution for the Irish Free State. It is the only sound and standard method of creating the new constitution through the representatives of the people giving full expression to the popular will and it is not possible to think of any better device for this great purpose. A constituent assembly has also been proposed for drawing the constitution of Burma and it is expected to frame the new constitution. In China there is already a constitution-making body struggling to establish a new government. As a result of the last world war, and in the background of the new international situation, there has been a great awakening in Asiatic countries, giving rise to national movements for liberation and independence. Constituent assemblies may be called in these countries to draw their constitutions. In Europe also, as a result of the vast changes brought about by the second world war, new constitutional developments are taking place and constituent assemblies have been called afresh in many countries for restoring or changing or creating new constitutions. The possibilities of the adoption and expansion of this democratic and standard machinery for framing new constitutions are vast within India itself.



## UNITED STATES OF AMERICA.

## ORIGIN OF THE CONSTITUENT ASSEMBLY.

*The American Revolution.*—The idea of a constitutional convention for the sole and special purpose of framing the constitution of a people first originated in the constitutional experiments which went on in the Thirteen Colonies of the United States of America, after the American Declaration of Independence in 1776. Students of history are quite familiar with the struggle of the American Colonies in the eighteenth century for freedom and independence against foreign rule. These Colonies were ruled by England and were subjected to a Colonial system of Government. The Americans who had settled in the New World and converted the vast wilderness of this newly discovered and rich continent into their civilised homes, were a vigorous, independent, progressive and highly cultured people. They had gradually developed a common way of life and a distinct outlook, known as the American spirit, which in spite of the heterogeneous racial elements in the make-up of the population acted as a unifying force throughout. The Americans are even to-day proud of this American way of life and spirit, which is reflected in their constitution and their political institutions.

The struggle for independence came to a head in the latter half of the eighteenth century when Great Britain began to impose new taxes and duties and special trade laws which were resented by the Colonies. The Colonists began to question the right of Parliament to levy taxes on them and Parliament persisted in her right to do so and asserted the supremacy and sovereignty of the British Crown and Parliament over the Colonies. The Colonists began to claim their civil and political rights one after another and finally ended up by the Declaration of Independence. The British Government was reluctant to yield on the right of Parliament to tax the Colonies and were led to take up untenable and unpopular positions which ended finally in the adoption of reprisals and coercion. All this led to a clash of arms leading to the War of Independence in which the Colonists finally triumphed and the British connection was clearly severed.

The American Revolution may be said to have commenced from 1763 and ended by 1789 when the new Federal Constitution was put into force for the whole of the United States of America. It had certain clear land-marks. They were (1) The American Declaration of Independence; (2) The Virginia Bill of Rights; (3) The Philadelphia Convention; (4) The ratified Federal Constitution. These embodied the great and fundamental principles of the American Revolution and were the beacon lights of American progress.

In 1764, a Revenue Act was passed imposing a sugar-tax the preamble of which raised a constitutional question. American lawyers like John Adams and James Otis raised the question of taxation without representation. In 1765, the Grenville Ministry passed the notorious Stamp Act which stirred the Colonies in an unexpected and unprecedented manner and forced the question of American Independence to the fore. By this Act, revenue stamps had to be affixed to all newspapers, pamphlets, advertisements, commercial bills, licenses, bonds, leases, notes, legal documents and others. The revenue thus raised was to be spent solely in defending, protecting and securing the Colonies for the mother-country. The Thirteen Colonies unanimously opposed this measure tooth and nail. All classes joined in the opposition. There were outbreaks of violence and demonstrations throughout the Colonies. Americans began to talk of independence. Virginia led the opposition and raised the cry of "no taxation without representation." On the initiative of Massachusetts, a Congress of delegates from nine Colonies met in 1765, led by able lawyers like James Otis. It mobilised colonial opinion against British interference in American affairs. The leaders declared that they were Americans first and claimed the natural rights of man. The Congress questioned the right of Parliament to levy taxation.

In 1774, the first Continental Congress of the Colonies, representing twelve of them, assembled at Carpenter's Hall, Philadelphia to consider the situation. The leaders began to think of embodying their rights and liberties in a fixed and unalterable written constitution. The idea of written constitutions took shape, and came to be in vogue. American experience with England led them to dislike an unfixed constitution as that of Great Britain and pinned its faith to a fixed constitution. The first Continental Congress of Philadelphia, was an extra-legal body, chosen by Provincial Congresses or conventions. It consisted of fifty-five delegates. John Adams was one of the leading men of the Congress. The Congress adopted a series of retaliatory measures to counter the Stamp Act and various other coercive measures. It adopted a policy of boycott, non-importation and non-consumption. Finally it drew up a Declaration of Rights and grievances. Lord Chatham extolled this document of the Congress. It was conciliatory in tone but men like John Adams, James Otis, Jefferson and Wilson, leaders of the more radical section stood for total Independence. The more moderate elements were satisfied with some form of Dominion Status. The Congress created associations throughout the Colonies to carry out its orders. It represented the new spirit of revolt. In May 1775, the second Continental Congress assembled at Philadelphia and appointed George Washington as Commander of The American Forces in the fight for independence. As a result of all the agitation the Stamp Act was repealed in 1776 but Parliament enacted a Declaratory Act affirming its sovereignty over the Colonies. But this was too late.



and half-hearted. Revolt was met by coercive Acts. In January, 1776, Thomas Paine published a pamphlet styled "Common sense" which swept aside all dialectical and sentimental arguments and propounded the case for independence in vigorous language which roused every American Colonist. He rested the case of independence on the doctrine of the natural rights of man. He attacked monarchy, foreign rule, British connection and European connections and argued for a united, self-sufficient American Republic. All those who attacked the new movement were characterised as men who cannot see and will not see. The pamphlet rallied the undecided and the wavering elements to the side of independence. Thomas Paine takes his place along with John Adams in the contribution towards the creation of the new American republican spirit.

In May, 1776, the Continental Congress directed the Colonies to establish their own independent Governments. The Congress declared the Colonies free and independent and appointed a Committee consisting of Thomas Jefferson, John Adams, Benjamin Franklin, Roger Sherman and Robert Lamington to prepare the Declaration of Independence. Jefferson wrote the Declaration which was adopted and proclaimed on July 4, 1776.

*The Declaration of Independence.*—The Declaration of Independence announced the birth of a new nation. It set forth the principles and philosophy of the American revolution. The grievances against England and severance of British connection were not the fundamental part of it but were only incidental. The case for American Independence was rested on universal eternal principles and natural rights of man. The Declaration set forth "We hold these truths to be self-evident that all men are created equal, that they are endowed by their creator with certain inalienable rights, that among these are Life, Liberty and the pursuit of happiness. That to secure these rights Governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any form of government becomes destructive to these ends it is the right of the people to alter or abolish it, and to institute new Government, laying its foundation on such principles and organising its powers in such form as to them shall seem most likely to effect their safety and happiness." As observed by a writer "The true lessons of its doctrines and the haunting beauty of its phrasing insure immortality to the great Declaration."

By the time the Declaration of Independence was adopted, the clash of arms had already begun and military and naval operations became inevitable. Although the Stamp Act was repealed, fresh coercive Acts followed and the Townshend duties on tea and other articles led to outbreak of violence and serious incidents. Finally British armies and American forces came into open conflict and the War of Independence was in full swing. At first, the Americans suffered many reverses and it looked as though the battle for freedom

would be lost. But George Washington's character, genius, patience, and heroism changed the course of events and ultimately the British army was defeated and in October, 1777, General Burgoyne surrendered his entire army which was a decisive blow to the British. France threw her moral and material support on the side of America. The Independence of the Thirteen Colonies was an accomplished fact, which was welcomed throughout Europe, as the harbinger of a new era. George Washington who won the War of Independence was more than a general. He was the embodiment of all that was noblest and best in the American people. Another great personage who had taken a noble part in the fight for freedom was Benjamin Franklin, son of a printer who became a famous writer, scientist and champion of democracy and independence.

#### STATE CONSTITUTIONS AND ORIGIN OF CONSTITUENT ASSEMBLY.

The idea of a constitutional convention originated in the constitutional experiments which went on in these Thirteen Colonies of the United States of America after the Declaration of Independence in 1776. As a result of the over-throw of foreign rule by a revolutionary war, the Colonies had been transmuted into free and independent commonwealths. In order to understand these experiments, we have to examine the intellectual and cultural background of the age and the political conditions of the times.

The American Revolution was not merely revolutionary and destructive but creative and constructive. As James Madison said "Nothing has excited more admiration in the world than the manner in which free governments have been established in America, for it was the first instance from the creation of the world,—that free inhabitants have been seen deliberating on a form of government and selecting such of their citizens as possessed their confidence to determine upon and give effect to it." The Revolution was preceded and followed by a deep anxiety on the part of men to establish permanent and well-organised governments. The thoughts of men were concentrated on devising suitable political institutions. As observed by Mr. Andrew C. MacLaughten "The American Revolution deserves distinction among revolutions not because a monarchy was over-thrown but because of the peaceful skill with which institutions were founded on a lasting basis."

\*Men began to study political institutions. The Greek and Roman constitutions, as well as the Swiss, Dutch and Belgian confederations were studied with great interest. The British constitution and its traditions exercised a deep hold on the American mind. Already in their fight against England, the Colonists appealed to the ancient and historic rights of Englishmen and to Magnacarta, 1215, the Petition of Right, 1626 and the Bill of Rights, 1689. The English revolution and the principles it embodied stirred the American mind. To a great extent the American institutions had their roots deep in British constitutional traditions.

The writings of John Locke, whose treatises on Government were published just after the English revolution, with his emphasis on the theory of equality of nature and government by consent of the governed, Montesquieu's 'Espirít des Loís' which took England as its model and which propounded the doctrine of the division of powers into executive, legislative and judicial, these and other writings of the political philosophers of the age gave an intellectual stimulus and furnished food for thought. But the most powerful influence and hold on the American mind during this period was that of the theory of 'Social compact' propounded by the prophet of the French revolution, Rousseau. No writer ever exercised so magnetic an influence on men's minds in the eighteenth century as Rousseau. His political philosophy consisted in the Declaration of the natural equality of men and the sovereignty of the people and he proclaimed his doctrines from the point of view of the common man. These teachings gave rise to the assertion of the theory of the natural rights of man everywhere. In the State-Constitutions, in the various bills of rights adopted in them, and in the American Declaration of Independence itself, this theory of social compact and natural rights of man are referred to and acted upon. The constitution of Massachussets 1780, typified this. It declares "The body politic is formed by a voluntary association of individuals. It is a social compact by which the whole people covenants with each citizen and each citizen with the whole people, that all shall be governed for the common good." Another factor in moulding the mind of the age was the growth and influence of puritanism and the Calvinistic philosophy with their emphasis on individual conscience and reason. It was thus an age of enlightenment, of liberty, and a turning point in the progress of the Thirteen Colonies. A successful war of liberation was followed by an intellectual stimulus and mental exhilaration as in the case of Athens after the defeat of the Persians. Plato and Aristotle, Polybius and Cicero were studied with the same care as the modern writers. Edmond Burke summed up the situation thus: "There probably was never a time or place at which interest in the science of Government was deeper or more widespread than among the American people during the revolution."

It was in such soil that the earliest examples of constitution-making began. After the overthrow of foreign yoke, during these critical times, emergency provisional Governments were set up in all the States and they were generally known as congresses or conventions. These bodies, although backed by the people, were not formally elected by them. These provisional Governments undertook the task of framing constitutions for their States and they exercised both constituent and legislative powers. It was in the course of these experiments that the idea of a constitutional convention as a special body elected solely for the purpose of framing a constitution took a definite shape in the United States of America.

The States began to adopt written and fixed constitutions. The Colonists put their faith in them. John Adams declared "In all free state the constitution is final." These State-Constitutions rested on the principle of consent, by the governed. The practice varied in the Colonies. In Virginia, South Carolina, and New Jersey, constitutions were framed in 1776 by the Legislatures without express authority for that purpose from the people and were also promulgated without being ratified or approved by them. In New York, New Hampshire, Georgia, Delaware and Vermont the legislative bodies or provincial congresses framed constitutions by express authority of the people but did not submit them for popular approval. In Maryland, Pennsylvania and North Carolina, there was express authority for framing the constitutions and they were also finally ratified by the people. It was in Massachussets (1780) and in New Hampshire (1784) that constitutional conventions specifically elected by the people for the sole purpose of drawing the constitution were adopted and the constitutions framed by these special bodies were also submitted to the people for approval and then put into force. This has become the standard method of constitution-making for later times.

#### MASSACHUSSETS.

Massachussets thus adopted the first typical constitutional convention which became the model for the Convention of Philadelphia which drew up the great constitution of the United States of America. It took nearly five years for Massachussets to develop this idea. A provisional government established in 1775 continued on a revolutionary basis till 1780. This body requested the people to empower it to frame a new constitution and it was granted. But the Town of Concord refused to accept this procedure and at its meeting it laid down the principle that a specially elected convention was the only proper body to draft the constitution and that the people should approve the same. It was argued that no ordinary Legislature had the power to draft a constitution even for submission to the people. It was also declared that an ordinary Legislature was not a fit body to establish the fundamental law, since one of the objects of a government was to secure the rights of citizens even against the tyranny of legislative bodies. It would logically follow that by the same power by which a Legislature established the constitution, it could also amend the same, which was no protection at all to the citizen. On these main grounds, the constitution that was framed by the Massachussets Legislature in 1778 and submitted to the people for ratification was rejected by a five-sixth majority of voters at a special election. This concord idea became so popular with the result that in 1779, the Legislature suggested to the people the election of a special convention. This being approved by the people at their meetings, a special election was held based on universal adult franchise, at which as many delegates were chosen by the towns as they could send representatives to the Legislature itself. This convention met



and appointed a committee to draft the constitution. On 2nd March, 1780, the final draft was adopted and this was submitted to the people for discussion and approval. The people at their meetings were required to discuss the draft article by article and vote on it and to ratify it if two-thirds of the voters were in favour of it. In the alternative the convention suggested that the meetings might suggest their alterations and empower the convention to carry out the alterations according to the returns. When the returns were sent to the convention after sufficient time was given for the carrying out of the above complex procedure, it was found that there was a clear two-thirds majority for each article of the constitution, whereupon the entire constitution was declared as ratified and was put in force on 15th June, 1780. Thus the whole process by which the second Convention of Massachusetts was chosen and the method by which it was formed and its draft was ratified, embodied the characteristics of the constituent assembly.

In the formation and development of the constitutional convention, John Adams, one of the greatest leaders of Massachusetts, was the moving spirit. It is said that in the debates in the Congress and the Legislature, Adams suggested the idea of calling special conventions in States for settling the constitution. He said he had studied ancient and modern confederations but they were all huddled up in a hurry by a few chiefs. In his view, the fabric of the State should be built on broad foundations by the people's wisest representatives in a calm and mature way. He gave this idea to the Continental Congress of the United States. He was asked during the debates in the Congress "how could people make a constitution?" and he answered "By conventions of representatives who should fabricate a Government for acceptance." Adams set men thinking and the question everywhere was "How could people form constitutions and establish States?" Adams gave the answer. The constitutional convention thus became the basic American institution destined to play a great part in the history of constitutional development.

It may be of interest to note in passing that the idea of a constitutional convention was not wholly novel. After the overthrow of the Stuarts in the great Rebellion in England, an Instrument of Government was drawn up for the nation. There was also the Agreement of Levellers in 1648 which provided a similar idea of a special body to settle only the constitution. Even before John Adams of Massachusetts, it is said that John Lilburne, the Chief of the Levellers in England and one of the wisest writers of the times, conceived the idea. Sir Henry Vane, who was a Governor of Massachusetts, when he went back to England published a book in 1656 'Healing question' in which he spoke of a convention of the wise, not to exercise legislative powers but to draw the fundamentals of a constitution. Although the idea was conceived, it never took shape in England.

The main characteristics of the constitutional convention as conceived by John Adams and illustrated by Massachusetts are (1) A specially elected body representative of the people to frame the constitution; (2) Convention chosen solely for that purpose; (3) Submission of the drafted constitution to the people for approval; (4) Framing of the constitution by the wisest men included among the representatives so chosen; (5) Clear distinction between constitutional law and ordinary law not sharply drawn in other States.

One of the important features of the State-Constitutions of this revolutionary age is the embodiment of Declarations or Bills of Rights in them. As a result of the experience of the fight of the Colonists with England, the Americans wanted to secure their inalienable natural rights in the constitution itself. The Virginia Bill of Rights drawn by George Mason was the model for the rest. It affirmed the principles of popular sovereignty, freedom of elections, separation of powers, and enumerated the fundamental liberties for which Englishmen fought since the days of Magna Carta. The list of such rights varied according to the needs and notions of each state. The Declarations of Rights forestalled the famous Declaration of the Rights of man and citizen by the French Revolution.

The State-Constitutions also paid allegiance to Montesquieu's doctrine of the separation of powers. This was rigidly adhered to in Massachusetts under the influence of John Adams. The constitution of Massachusetts provided "In the Government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers or either of them; the executive shall never exercise the legislative and judicial powers or either of them; the judicial shall never exercise the legislative or executive powers or either of them; to the end it may be a Government of laws and not of men." Virginia however attached great importance to the writings of John Locke which extolled the supremacy of Parliament.

All the State-Constitutions attached importance to property qualification for franchise. The principle of "stake in society" became the criterion. In this respect the American Revolution was unlike the Russian Revolution, which swept away all property qualifications for franchise. The American revolution was mainly a political revolution and not a social one as in France or economic as in Russia. Class and social distinctions remained intact, slavery was not abolished and the structure of society was not altered. There was no expropriation of property. The establishment of new and free governments resulted in a remarkable growth and expansion of Universities, education, literature and science in general.

#### THE ARTICLES OF CONFEDERATION AND ITS DEFECTS

The transformation of the Colonies into independent Sovereign States with their own separate constitutions led to a search for an organisation as regards their common affairs. During the revolutionary war, the continental congress acted as the central organisation



for carrying out the war, by virtue of common consent of the people during an emergency, but there was no common constitution. The second Continental Congress realising the need for such an instrument, appointed a committee which drew up the Articles of Confederation. But it was brought into force only in 1781, when the consent of all the colonies was finally secured.

The form of government by the Articles of Confederation, though an improvement on the existing situation, was not a national one but was a loose confederation or league of sovereign and independent States, from which any State could withdraw at its will. The confederation had no legislative, executive and judicial bodies and all powers were vested in a unicameral Congress. Each State had one vote in the Congress regardless of size or population.

The Congress had no taxing power. It could not levy taxes directly or individually. It acted on States and had no direct control over the citizens. There were citizens of the States but no citizens of the United States of America. There was no strong executive to enforce its decrees or orders by its own hand. The requisitions of the Congress had to be addressed to the various States and compliance was voluntary. The consent of Nine States was required for all important measures, which it was hard to obtain. There was no unity of action. State patriotism was strong and every State had a negative on every measure proposed by the Congress. The Congress has no power to regulate commerce among the States. It could not raise its own army. The States by Tonnage and Tariff Acts were making commercial wars upon one another. In short the Congress lost its credit abroad and at home. No doubt the Articles of Confederation was an attempt at unity and step towards federalism but it was ineffective and inadequate to meet the needs of the country.

These defects led the leading statesman of the age to search for a new form of government. As observed by a writer "The story of the Federal Convention is fundamentally the search for a new balance between liberty and order and for a new distribution of powers between states and nation." Men like Thomas Jefferson and Madison saw clearly the dangers ahead and recognised the urgent need of a better constitution to ensure peace, justice, liberty, common defence and general welfare. Jefferson wrote to Madison thus "and with hand and heart I hope the business will be essayed in a full 'convention'." There arose a patriotic desire among statesmen for a strong and united nation, able to take its place among the nations of the world.

There were several conventions of delegates from various States before 1787. Alexander Hamilton a young lawyer of New York led the movement for a general convention. George Washington more than any other was responsible for pointing out the defects of the confederation and calling for a remedy. He declared that the States were actuated by local politics and prejudices. He appealed to the people to forget local and sectional prejudices and policies,

to make those mutual concessions which were requisite for the general prosperity and for the promotion of national character as an essential for unity. The leading statesman made a vigorous appeal for a strong federal union.

#### DIVISIONS.

The movement for federation met with terrible obstacles. There were plans to dismember and partition the States into the Eastern, Southern and Middle confederacies as sovereign bodies, uniting themselves into alliance out of free will and on an appreciation of common interests. Henry Patric led the isolationist movement and wanted to form an independent eastern confederacy and there were intrigues to break the Union movement. These separatist tendencies were so fanatical and provocative that gloom and despair filled men's minds. The supporters of federation urged that reflection would show the futility of several independent confederacies, merely resting on voluntary alliances and appealed to the separatists to abandon their course, but all in vain. The men of reflection, however, were determined to establish a Government which would be efficient at home and abroad. In this gloomy situation, the Shays Rebellion in Massachusetts and other disorders occurred, an insurrection against the existing state of affairs. These disorders furnished one more immediate proof for creating a strong Central Government.

#### THE ANNAPOLIS CONVENTION.

The first move for a general convention came from Virginia when it proposed the holding of a trade convention of all the States and it was to be held at Annapolis in the State of Maryland in September, 1786. Only five States, Virginia, Delaware, Pennsylvania, Newjersey and New York responded to this and their delegates met on September 11, 1786, and proceeded to consider their position. The scope and object of this convention was to take into consideration the trade and commerce of the United States and to evolve a uniform system in their commercial intercourse and regulations for their common interest and harmony, which would have the unanimous approval of the States. This convention did not conceive it advisable to proceed to the business of their mission under the circumstance of so partial and defective a representation. It however expressed its unanimous and earnest wish that speedy steps should be taken to call a full convention of a representative character with wider scope and powers. It was resolved to call a convention of deputies from the different states for the special and sole purpose of entering into the investigation of the defects of the confederation and devising a plan for remedying such defects. The convention was to meet at Philadelphia on the second Monday of May 1787, and devise such measures as to render the constitution of the federal Government *adequate* to the exigencies of the union, and these draft measures should be laid before the Congress, and thereafter these should be ratified by the State Legislatures. This proposal of the Annapolis Convention was

transmitted to the State Legislatures and placed before the Congress. Congress thereupon resolved that a convention should be held for the sole and express purpose of revising the Articles of Confederation and reporting to itself and the Legislatures of the several States such alterations and provisions as would when agreed to by Congress and confirmed by the States render the federal constitution adequate to the exigencies of Government and the preservation of the Union. The sanction thus accorded by the Congress to the convention plan gave an impetus to the States to join the same. In pursuance of this call, delegates to the new convention were chosen by the Legislatures of the States or by the Governors in conformity to authority conferred by the legislative assembly. Rhodes Island did not join in this convention but a letter from a Committee of merchants and other citizens was sent containing sympathetic views. New Hampshire joined the convention at a late stage. The Federal Convention was to meet on 14th May, 1787. Alexander Hamilton was the moving spirit of the Annapolis Convention. Its recommendation was the direct occasion of the gathering of the Philadelphia Convention of 1787.

#### THE PHILADELPHIA CONVENTION, 1787.

Although the convention had to meet on 14th May, 1787, owing to difficulties of travel and the dilatory habits developed in the Congress, the States were represented only on 25th May. The convention held its sitting in the Independence Hall in the State House.

The composition of the convention was of a remarkable character. Out of a total strength of seventy-four delegates, only fifty-five actually attended. Virginia was the first to respond to the convention and its delegation of five was the most brilliant. No less than George Washington led the delegation. He was fifty years and had won the war of Independence. Henry Patric a leading figure of the age, was listed but declined to serve and remained a bitter opponent of the constitution. He was opposed to centralisation and remained an obstinate champion of state-patriotism and isolation. His place was filled by Edward Randolph aged thirty-four, six feet tall, a splendid figure-head, the Governor of Virginia. John Blair, later a Judge, was one. James Madison, the most industrious and the most accurately informed of the delegates whose quiet and constructive work drew universal praise, was one of the group. George Wythe a professor of law was also there and George Mason, Author of the Virginia Bill of Rights. Among the delegates of Pennsylvania, was James Wilson, ablest of lawyers and strongest member of the convention. The aged name of Benjamin Franklin was added later to the list. Among the delegates of New York was the celebrated Alexander Hamilton of Federalist-fame, the smallest physically, and the biggest intellectually, among the delegates. He was young being only thirty. His reputation was established during the Revolution, in State Constitution and in the Annapolis Convention. George

Washington, Madison, Hamilton and Wilson were the leading men of the convention. It was a most representative body containing many men skilled in statecraft and rich in political experience and practical knowledge. A majority of them, thirty-three were lawyers and most of them had received a practical training in politics. Many had held high offices as governors, or officials and had served in the State Legislatures and the Congress. There was plenty of youth and a little old age, idealism combined with practicality. As was observed by a writer "Among the leaders were men trained in the law, nursed in finance, skilled in administration, and learned in the political philosophy of their own and all earlier times." There was a notion that the convention constituted a galaxy of Solons and Ciceroes and that it was an assembly of demi-gods. It is true that it contained political giants like Washington, Hamilton, Franklin and Madison, but the strength of the convention lay not in this attribute but in the fact that in its make up it included men of widely different ability, temperament, and experience with divergent and discordant views. It was said "The conventions were composed of able men who listened to thoughtful arguments and were themselves influenced by the authority of their leaders. The counsels of the wise prevailed over the prepossessions of the multitude." Its variety of ideas and attitudes, not its omniscience was the greatest asset of the convention. It was composed of men animated by a noble spirit of compromise, as was reflected in the achievements of the convention. The compelling character of the framers of the constitution was hard-headed common sense.

#### THE WORK OF THE CONVENTION.

The first duty of the convention was to choose its President. Benjamin Franklin as the oldest delegate was thought of by some but Washington's was the only name proposed and he was declared elected formally and conducted to the chair by two delegates. On taking the chair with dignity and solemnity suited to the gravity of the occasion the President thanked the convention for the unique honour and confidence placed in him and straightaway proposed the election of a Secretary. One Jackson who had been in active service in the Revolution was elected by a majority against another set up by Franklin. Then the credentials of the delegates were read. A committee of three people was appointed to prepare standing orders and rules and after appointing a messenger and a door-keeper it adjourned. It met again to consider the rules.

The organisation of the convention was on the basis of State-representation, each having one vote, seven making a quorum and a majority of votes was required to decide all questions. One of the most important points of procedure that was laid was a policy of strict secrecy regarding the proceedings of the convention. It was considered important to protect the delegates from criticism and that their discussions should be free from the pressure of public opinion. It was decided not to call the 'yeas' and 'nays' and it was



ruled that no copy be taken of any entry in the journal without leave of the house ; that members be permitted to inspect the journal and that nothing spoken in the house be printed or otherwise published or communicated without leave. It was thus a secret sessions. Sentries were posted without and within to prevent any person from approaching near. So scrupulously was the order of secrecy observed that it took several years for people to know definitely as to what took place in the convention. In this connection an anecdote is worth recording. One day a member dropped a copy of the resolutions drawn for consideration on the floor and it was picked up by another and handed over to the President, who at the end of the day reprimanded the member for carelessness in stern terms. "I must entreat gentlemen to be careful lest our transactions get into newspapers and disturb the public repose by premature speculations. I know not whose paper it is but there it is (throwing it on the table) let him who owns it take it." No one ever owned it, so alarmed they became. But this policy was bitterly opposed by the anti-federalists as undemocratic and tyrannical and gave rise to wild rumours outside as to what was taking place within the convention.

The regular work of the Sessions began actually on May 29 and the hours were fixed between 10 A.M. to 3 P.M. The average attendance was about thirty. The President sat on a raised platform in the long room and commanded the awe and respect of all.

As regards the scope of the convention most of the delegates were instructed to adhere to the revision of the Articles of the Confederation and did not contemplate any radical and far-reaching changes. According to this school of thought, the object was not such a Government as might be best in itself but such a one as the constituents had authorised them to prepare and would approve. Randolph of Virginia however declared that he was not scrupulous on the point of power. "When the salvation of the republic is at stake, it would be but treason to our trust not to propose what we found necessary." Hamilton agreed with this view and declared "We owe it to our country to do in this emergency whatever we deem essential to its happiness. The States sent us here to provide for the exigencies of the Union. To rely on and propose any plan not adequate to these exigencies merely because it was not clearly within our powers would be to sacrifice the means to an end." The latter view prevailed at the end and the delegates boldly disregarded the terms of reference and proceeded to draft a constitution *de novo*.

#### VARIOUS PLANS.

Three important plans came up for consideration before the convention and the whole house went into a committee to discuss these. The first plan was that of Virginia led by Randolph emphasizing a strong centre and advocating a *de novo* instrument of Government. This represented the view point of the big States. New Jersey representing the angle of vision of the smaller States put forward its own plan, which was in sharp contrast to the Virginia plan.

Hamilton of New York intervened with his plan and made his famous contributions to the debate. He opposed other plans and advocated the British pattern of Government. "The British Government was the best in the world" he declared. Nothing short of it would do for America. According to him, it is the only Government in the world which unites public strength with individual security. Hamilton was a successful lawyer of New York, a man of fashion, a soldier, a marvellous speaker, and an excellent pamphleteer and writer, and erudite scholar in political science ; no stronger advocate and no more formidable opponent of a cause ; he belonged an to esoteric coterie of admirers of the British constitution. He had a suspicion of republican principles, unlike Jefferson and Madison in this respect. It must be said to the credit of Hamilton that although he championed and fought for his plan, later on when he found an extremist like Patric Henry fanatically advocating State-autonomy against centralisation, he with admirable promptitude laid aside for a time his own opinions and exerted himself with tongue and pen joining the contest with Madison and Jay as a Federalist. His contributions to the 'Federalist' which gained world-wide fame, have earned for him an immortal place in the literature of political science. Johnson humorously said of him, "The gentlemen from New York has been praised by every body, he has been supported by none."

The whole House went into a committee and considered all the plans. The path of centralisation was strewn with difficulties. There were divergent views and animosities over several problems, like States representation, the slavery question, commerce, Northern States versus Southern States and so on. All these had to be reconciled. Fortunately a majority of the delegates were agreed on the supreme necessity of establishing a strong federal centre and for a new constitution suited to the needs of the times.

The major States were ready to make compromises and concessions on this principle. In devising such a constitution it became necessary to make compromises. The questions and the conflict which they gave rise to, were such that it looked as if failure would result even at the outset. The situation became so tense, that at one stage, Benjamin Franklin, a man of sceptical views, was so much distressed at the prospect of failure and the difficulties that arose, that as all human means of obtaining agreement seemed useless, proposed that the convention should open its proceedings with prayers to Heaven. The convention was repeatedly on the point of breaking down, so great were the animosities, and the differences. But the delegates displayed a remarkable spirit of compromise and undaunted, laboured on incessantly and by the hand of creative spirit and the exercise of constructive statesmanship subdued all passion and controversy and within five months of its commencement the Convention of Philadelphia produced a constitution which became a model for the world.



On the demand for equal representation by the small States and according to population basis by the larger States, a compromise was reached by giving equality in the Senate to the small States and proportional representation to the large States in the Lower House. On all other crucial matters similar compromises were effected. A compromise committee was appointed to go into these matters. The prospects of unanimity became so bright at the end that there were rumours of leakage of news from the convention. After the great compromise, some newspapers wrote "so great is the agreement on important issues, we may call it 'Unanimity Hall'."

A final committee of five was entrusted with drafting the details of constitution. Rutledge, Randolph, Gorham, Ellsworth and Wilson formed a strong committee. This Committee of detail took for its materials, the articles of the confederation, and other subjects and most important of all the State-Constitutions. The phraseology of the State-Constitutions is constantly used. After the work was done, the convention re-assembled and rushed through its business, the majority riding rough-shod over details.

There was growing impatience, once agreement was reached on essentials, and the questions of election of the President of the Federal State and the future amendments of the constitution were considered and settled. A Committee of style was appointed to give a finishing touch to the draft and to harmonise the whole. It is said that the pen of Morris wrote the constitution. The approved constitution was signed by thirty-nine delegates, some refused to sign, some were absent; but all were animated by a good spirit. There was no hard feeling amongst the delegates and at the end of the convention the delegates dined together at the City Tavern and took a cordial leave of each other. The convention adjourned *sine die* after committing the draft to the President for safe custody and for its being transmitted to the Congress which in turn was to place the same for ratification before the States. Thus ended the historic constitutional Convention of Philadelphia which produced the modern constitution of U. S. of America which is described as the greatest of modern constitutions.

#### RATIFICATION.

The convention decided to have the constitution ratified by State Conventions rather than by State Legislatures, to secure complete popular approval for the new constitution. It took nearly a year for the ratification of the constitution by the States. When the new constitution was transmitted to the States, great controversy arose over it and various objections were urged against ratification. One objection raised and voiced by no less than Jefferson himself was that the constitution did not contain a declaration of fundamental rights of the citizen. Hamilton strongly objected to the adoption of it and ridiculed the very idea; while others explained that the proper place to embody the declaration was the State Constitution

and not the federal constitution, as the States were sovereign bodies. Massachusetts delegation suggested that the constitution might be carried as it was and that amendments might be made later and this argument carried conviction and Jefferson accepted the course. It was partly in response to this agitation that the first ten amendments were made in the constitution within a few years of its coming into force, affirming the rights of citizens. Another objection that was made was that the convention went beyond the terms of reference and acted without authority. It was at this time that Hamilton, Madison and Jay flung themselves into the task of moulding opinion in favour of ratification. A veritable flood of pamphlet literature descended upon the country. A collection of newspaper articles by Hamilton, Madison and Jay under the name of "Publius" was brought together in the 'Federalist' and was broadcast throughout the land. The 'Federalist' became celebrated throughout the world as one of the most valuable and permanent contributions to political science. The controversy gave rise to political parties in the country which mainly divided into Federalist and Anti-Federalist.

The 'Federalist' had to convince their fellow citizens that the proposed constitution conformed to their cherished principles and at the same time would serve the varied interests. Ratification had to be achieved against the protests of a determined, energetic and skilful opposition. Neither party was overnice in the use of its weapons. Arguments were not often on merits but based on prejudices. There were attacks on persons and parties and motives were attributed. Charges of wickedness and stupidity were cast back and forth. Benjamin Franklin turned his hand against the Anti-Federalists. He declared that the conduct of the Anti-Federalists was such that even if the Deity had framed the constitution, they would have rejected it. The 'Federalist' lifted the controversy above pettiness and partisanship to dignity and impartiality. The 'Federalist' worked hard to break the violence of faction and to control this vice which was considered as the enemy of all popular governments. Hamilton stressed upon the need for toleration and compromise. He told the New York Convention "It became necessary therefore to compromise, or the convention must have dissolved without effecting anything. Any other system would have been impracticable. Let a convention be called to-morrow—(he challenged his hearers); let them meet twenty times, nay twenty-thousand times, they will have the same difficulties to encounter, the same clashing interests to reconcile." The 'Federalist' carried public opinion with it in the end.

In connection with the opposition to ratification it must be remembered that the Anti-Federalist party was not something which suddenly arose for opposing the adoption of the new constitution. It represented a movement which had been working for the previous ten years. The opposition was inspired by several reasons. Sectional fears of commercial domination by other States: racial prejudices, e.g., Germans of Pennsylvania supported federation, while the Scots

and Irish there opposed it; religious cleavages and finally even personal motives all contributed to swell the ranks of the Ante-Federalists. Economic motives also played a part. The coastal States supported federation while the internal regions were not interested in the Union. Men's interests centred in their own localities and the patriotism of many a sturdy revolutionist were bounded by the limits of his own State. Many argued that they did not over-throw foreign yoke only to be subjected soon to a remote central government.

The Anti-Federalist Party had its share of men distinguished for their integrity and ability. The Anti-Federalists had thus a genuine distrust of the principles on which the constitution was based. They obstinately believed that the new constitution was designed to bring about a consolidation and ultimate destruction of State-sovereignty and that it was a surrender of liberties won in the war. There were also misrepresentations of the meaning of the new constitution. It was said that the Ante-Federalists let loose a "torrent of falsehoods." Equally misleading statements and accusations were made of the Federalists. The period of ratification was thus a most excited, heated and critical period for the country. In this posture of affairs some one remarked that instead of suggesting amendments to the constitution, 'let us amend the hearts of men.' The Ante-Federalists also wanted a further general convention to consider the changes and objections but this was not acceded to. After the advantages and defects of the new constitution were canvassed between October 1787 to July 1788, the Federalists were able to carry the day. One of the chief objections against the constitution related to the eligibility of the President to re-election. It was feared that this would lead to an elective despotism. To the Ante-Federalists the word 'Executive' conjured up the picture of a powerful arrogant banker and merchant. Besides the Anti-Federalists, others also joined in this objection. The vast powers to be vested in the office of the President under the new constitution, it was thought, would make him a sort of dictator or despot surrounded by courtiers and cliques, which would be dangerous to the liberties of the country. Patrick Henry declared "your President might easily become King." Even Jefferson was opposed to this, although he only recommended a constitutional amendment to balance the position.

One of the reasons for the strength and permanence of the constitution of the United States lay in this process of ratification. Just as this Instrument resulted from a compromise, its adoption was secured after bitter, thorough, and well-argued opposition. It called forth in its defence abilities which threw new light on the source of government. They gave the rights of man a full and fair discussion and have explained them in so clear and forcible a manner as cannot fail to make a lasting impression on those who read the best publications on the subject especially the Federalist. Amplest opportunity was given to develop, to disseminate and to argue the objections and this was a beneficial thing. The whole people received

a course of liberal education in politics. Had the constitution been rushed through it would have lacked strength. Its triumph lay in this process of final ratification as well. The opposition failed because their creed was disunion. The constitution was thus a triumph of union.

The State Conventions one after another met and ratified the constitution. Delaware was the first to ratify on December 7, 1787. Pennsylvania and New Jersey did about the same time. Georgia and Connecticut ratified in January, 1788; in February, 1788, Massachusetts after a close vote; Maryland in April; South Carolina in May; New Hampshire in June; Virginia similarly by a narrow majority; and New York in July. North Carolina rejected it in August, 1788, but ratified in November, 1789; and Rhode Island ratified and joined in 1790. The New Constitution was put into force on March 4, 1789, with George Washington as the first President. The State of Vermont was admitted in 1791. Thirty-four States have since been added, making a total of forty-eight States.

#### LESSONS OF THE AMERICAN CONVENTION.

The delegates took their task most seriously. Madison and Hamilton declared that they were now to decide for ever the fate of the Republican Government. They felt that they were assembled there to weigh deliberately and calmly, to decide leisurely and peaceably upon the form of government by which they will bind themselves and posterity. Another feature was the display of a noble spirit of compromise by the delegates. The spirit of political accommodation or adjustment found its best expression in the convention. As beautifully observed by George Bancroft, New York, 1882, "For a time, wisdom and peace and justice dwelt among men and the great ordinance, which could alone give continuance to the Union, came in serenity and stillness. Everyman that had a share in it seemed to be led by an invisible hand to do just what was wanted of him; all that was wrongfully undertaken fell to the ground to wither by the wayside; whatever was needed for the happy completion of the mightily arrived opportunity, and just at the right moment moved into its place". Although the element of compromise played a great part, it should not be over-emphasised. It could not obscure the basic fact, that a strong federal government for the whole of the United States of America should be established and that there could be no compromise or deviation from it.

Another important lesson is the great confidence which the country reposed in the convention delegates. When the convention sat behind closed doors, the patience of the country was put to the test. It is true that there were wild rumours and speculation and all sorts of stories were told but the country on the whole patiently awaited the result and went calmly through the stages of ratification. The splendour of the result finally hushed and disarmed all speculation.



The importance of outside meetings and discussions in groups and social gatherings, on the part of delegates should not be lost sight of. In these gatherings of delegates at informal moments, discussions formulating plans or opposing them took place and these led to the promotion of agreement. These extra-conventional conferences contributed very much to success.

The influence of great personalities like the President George Washington, Madison, Franklin, Hamilton, Morris, Wilson and Adams was a potent unifying factor.

The most praise-worthy feature of the convention is the boldness displayed by the convention in the execution of its task. The instructions given to the convention limited their authority to the revision of the Articles of Confederation but the majority of the delegates disregarded them and began to prepare a wholly new constitution. When the draft constitution came up before the States for ratification, objection was raised that the convention went beyond the terms of reference. This was effectively answered by one Mr. Wilson in the Pennsylvania convention by a story narrated by him. He quoted the story of one Mr. Pope who was not a little deformed in body and who was accustomed to exclaim at the slightest accident "God mend me". One evening a little boy was lightening him across a gutter and the boy jumped over to the other side. Mr. Pope turned to the boy saying "God mend me": to which the boy replied "God mend you! He would sooner make half a dozen new ones." The constitution was a practical document drawn by practical men—men of high ideals and vision but also skilled and experienced in adjusting differences. One has to appreciate the ideal excellence of its practical provisions and the practical advantages of its ideal form. There were many theories regarding the influences which were at work in the creation of the American constitution. Some said it is patterned on the British model. Yet others would have it that it was influenced by the constitutions of Switzerland, Netherland, Belgium and Venice. No doubt these are referred to in the debates of the convention. Montesquieu's theory of the separation of powers into legislative, executive, and judicial, had firm hold on the mind of the convention. The influence of the Colonial and State constitutions were direct and powerful. But American experience and genius was the main basis of the constitution.

#### RECORDS OF THE CONVENTION PROCEEDINGS.

The proceedings of the convention were revealed to the public from the elaborate and careful notes taken by Madison and published after his death. Madison stated that he took a seat in front of the President of the convention with the other members on the right and left and thus took a favourable position of hearing. He worked in a determined way at much cost to his health and rendered great service to his country and the world. Madison's notes constitute the standard authority for the proceedings of the American conven-

tion. The first official publication of the proceedings of the convention was made in 1819 by John Quincy Adams, the Secretary of State. But it contained only a skeleton of the events, without the debates and discussions. Madison's notes contained these but he refused to publish them in his lifetime and thought posthumous publication the best course. After his death, on June 28, 1835, Mrs. Madison sold his papers to the government for a fixed sum. The publication was made in 1840 and they threw much light on the early interpretation of the constitution and on the nature and structure of the government. There were also other publications of notes but these were of minor importance compared to Madison's notes.

#### NATURE OF THE CONSTITUTION.

The American constitution is the first federation which set the pattern for others. The Americans successfully adopted the device of federation to their vast territory, which it was then thought was only suited to a small compact State like Switzerland and thus demonstrated to the world the possibilities of the federal principle. Its example has been successfully followed by other countries, chiefly by Canada and Australia.

The constitution of the United States consists of a President, a Congress and Federal Judiciary. The President is elected for a term of four years and he is eligible for re-election. A convention grew up that a prolonged tenure of public office by re-election would be against the republican spirit. But this convention was not observed in the case of the late President Roosevelt owing to the exigencies of War. He is chosen by a process of indirect election. The executive power of the United States is vested in him. He is the guardian of the faithful execution of the laws. He is the sole organ of the nation in external affairs and its sole representative with foreign nations. He has a veto power over the Congress under certain conditions. He has treaty-making power with foreign nations with the consent of a two-third majority of the Senate. He has vast powers of appointment of State officials. There is no cabinet system and ministerial responsibility to Parliament in the English sense. This strong presidential executive is an important distinguishing feature of the American Government.

The Congress, *i.e.*, the Legislature consists of two houses, the Senate and the House of Representatives. In the Senate parity of membership for States is provided for, while the lower house is elected on the basis of population. The Senate is a quasi-permanent body, each member being elected for a term of six years, one-third of them vacating seats every two years. The House of Representatives is elected as a body for two years only. It has the sole power of initiating money bills and instituting impeachment before the Senate. The electoral law is based on universal suffrage with equality for women and the States are given power to regulate the



franchise qualifications. In the electoral system of America great stress is laid upon local residence as a qualification for elected office.

The sovereignty of the American Legislature is not unlimited as in England. There are limitations the object of which is to protect state sovereignty and the rights of the individual citizen. All residuary powers vest in the States. The amendment of the constitution is made by either of two ways : either by a two-thirds majority of both Houses of Congress or by a convention called together on the application of the Legislatures of two-thirds of the States. The first ten amendments to the constitution affirm the fundamental rights of the citizen, which are embodied in Bills of Rights in State constitutions.

There is a Supreme Federal Court with a system of inferior Courts. The Supreme Court consists of a Chief Justice and eight associate Justices. The Federal Courts consist of ten circuit courts of appeal and forty-eight district courts corresponding to the forty-eight States. The main jurisdiction of the Federal Courts is the interpretation of the Federal constitution, in adjudicating upon constitutional questions of jurisdiction between States and the federation. The Courts have the power of judicial review of the executive and legislative acts which is a marked and essential feature of the American Constitutional system. The Judiciary of the Commonwealth is constituted the sole arbiter of the constitution. In 1937, when the Supreme Court declared illegal certain parts of the President's 'New Deal' legislation, an attempt was made to add to the numbers of Judges to get a reversal of the decision but this was rejected. The States have their Courts with jurisdiction in matters not involving the interpretation of the constitution.

The theory of separation of powers is most rigidly laid down and observed in the United States Government, although in practice the strain is not felt.

The constitution of the United States of America drawn by the Philadelphia Convention, 1787, has endured the stress and strain of time and it has been hailed as a classical model in substance, form and style and in the grandeur of its objectives set out in majestic terms in the Declaration of Independence and in the preamble of the constitution.

As observed by a writer "The creation of the federal system is undoubtedly the greatest original contribution of the United States to the art and science of government". It was a successful mode of distributing powers between central and local governments, based on popular sovereignty. It was the achievement of the constitutional convention, which was the product of the American Revolutionary era. The Federal constitution was the outcome of efforts extending over a quarter of a century. The earliest idea of an American Union is what was known as the Albany plan of union,

a plan drafted by Benjamin Franklin at a congress of delegates from seven Colonies which met at Albany in 1754. This Congress declared that a colonial union was absolutely necessary for the preservation of the Colonies. This plan allotted matters of general concern to a central body and left those of a local nature to individual Colonies. It forestalled the work of the Philadelphia Convention but the time was not ripe for the adoption of the plan. The Colonies had to achieve their independence first and America had to go through the fire of revolution before she could create the new constitution.

## THE DOMINION OF CANADA.

The Canadian Constituent Assembly, *i.e.*, the Quebec Convention, 1864, which drafted the Canadian constitution is the first convention within the British Empire, which inaugurated the first federal constitution. The history of Canada can be divided into four main stages. The first stage was one of Imperial wars and rivalry between the English and the French, ending in the English conquest in 1759. The second stage is marked by territorial expansion and growth of settlements and colonies with representative institutions. The third stage commences from the famous Durham's report 1839, establishing responsible government for the colonies. It was Durham who boldly recommended responsible government as the only solution for the colonial problems and his report is an important and historic constitutional document, and a land-mark in the evolution of Canadian politics. But with the introduction of independent colonies with responsible governments, unconnected with one another, intercolonial and racial conflicts arose. The Maritime Provinces consisting of Nova Scotia, New Brunswick, and Prince Edward Island kept aloof from Canada. In the United Provinces of Canada (consisting of Upper and Lower Canada) there was age long antagonism between the English and the French. Finally there was a movement for federation during this third period which led to the calling of the Quebec Convention in 1864, which paved the way for the Canadian Dominion. The fourth stage inaugurated the British North America Act, 1867, and is marked by territorial expansion of the Dominion and the evolution of its powers within the Empire.

It was during the third period after the introduction of responsible government and the consequent creation of separate and independent colonies that circumstances arose which led to the calling of a national convention to frame the constitution of Canada. The main factors which worked for federation were the common defence of Canada, common economic problems, and above all the great transport problem. Fear of the influence of the United States of America and even of annexation by her impelled the British Government to throw its weight on the side of a common union for the Colonies under the British Crown. The example of the federal experiment in the United States stimulated the minds of the people. But the immediate occasion which brought the federal idea to the forefront was as Goldwin Smith remarked, deadlocks in government, between the French and the English. There were no well-defined political parties to make responsible government a success and there were no stable ministries. The influence of race and religion had its own

share in the deadlocks and colonial conflicts. The population of the British North American Colonies comprised the English and the French in the ratio of about two to one in population. The French were Roman Catholic by religion while the English were Protestants. Two different languages and religious creeds prevailed. The Roman Catholic clergy were a force in Canadian politics. Since the conquest of Quebec by England, there was bitter antagonism between the two races.

Ideas of Union and federation for all the North American Colonies began so early as 1783. In that year Colonel Moore an English Military Government Engineer first conceived the idea of a union of all the provinces and the building up of one nation as a formidable rival to the United States of America. His was only a dream. In 1837, the Imperial Parliament adopted a resolution emphasising the need for a common arrangement for all the colonies. Durham's report of 1838, recommended that the bill for the union of Lower and Upper Canada should contain provision for the admission of all the North American Colonies, into the union. In 1840, the Union of Lower and Upper Canada into the new United Provinces set an example. In 1851, an Upper Canadian member of the Assembly Merritt, of Lincoln, suggested the idea of a constitutional convention to consider a federal union. But it was the deadlocks in the new United Provinces of Upper and Lower Canada with its system of double majorities and double-headed cabinets leading to instability and confusion, that made federation a dominant issue in Canadian politics.

Although suggestions in the direction of federation were put forward in the past it was Alexander Tulloch Galt, a great financial minister of Canada, who first pushed the idea of federation into the realm of practical politics in 1858. The break down of government led to the realisation of the necessity of devising a common central government for all the colonies. Galt worked hard and preached his gospel of federation. Galt proceeded to England and there he and Cartier the French leader, laid the case for federation before the Secretary of State, Bulwar Lytton, in a memorandum on October 23, 1858, which constitutes a great constitutional document urging federation as a constructive scheme for the solution of deadlocks. It suggested the importance of seeking for such a mode of dealing with the worsening difficulties created by deadlocks, as may for ever remove them. It referred to hostile custom houses, diverse fiscal policies, ununiform and divergent solutions and suggested confederation as the sole cure. Galt even urged the danger of annexation of Canada by the United States of America. The memorandum pointed out the value of a United Canada in time of peace and especially in time of war to England and urged the need for a convention. The memorandum stated that "the British North American Colonies were in the position of isolated and weak foreign States, a condition which was neither promotive of the physical prosperity



of all nor of that moral union which ought to be preserved in the presence of the powerful confederation of the United States of America". The Secretary of State communicated these views to the various Colonies. However for the time being the memorandum made no great headway in 1858. In 1859, a convention of 570 delegates of Upper Canada was held at Toronto, at the instance of George Brown for devising a course of joint-action for Upper and Lower Canada but there was no enthusiasm for a general federation. The opportunity came for Galt when in 1864, Charles Tupper of Nova Scotia led the movement for a legislative union of the three Maritime Provinces for their common defence and development. Charles Tupper, a doctor of Nova Scotia, who subsequently became one of the foremost statesmen of the day, organised a convention of delegates of all the Maritime Provinces to consider a legislative union for them and it met on September 1, 1864, at Charlottetown. The government of the United Provinces of Canada, without waiting for an invitation sent a delegation to urge a general confederation of all the provinces. This delegation consisting of the Canadian ministers including Macdonald, Brown, Cartier and Galt joined this convention and Macdonald persuaded the convention to agree to the establishment of a federal union. This delegation met with cordial welcome at the hands of the maritime convention. Then the whole convention decided to call a general convention of delegates from all the Colonies at Quebec to work out a plan of federation as agreed at this preliminary conference.

#### THE QUEBEC CONVENTION, 1864.

On October 10, 1864, the great Convention of Quebec was held. It was an assembly of the greatest British North Americans in public life and they were described as the fathers of the Dominion of Canada. Macdonald, a great finance minister of Canada was the most influential and leading figure of the convention. Next to him was George Brown who was universally loved and was looked upon as a prophet; then there was Galt, the founder and preacher of the new gospel of federation and an advocate of Canadian nationalism and unity; Tache was the oldest Canadian French leader. Charles Tupper of Nova Scotia is described as bold, confident and dominant. "He never knew the call to retreat. He had courage for any combat and resource for any emergency. He gave the state physical vigour, intellectual power and constructive energy." The Convention of Quebec ushered a new era of hope, faith and unity in Canada.

The delegates numbered in all thirty-three; twelve from Canada, seven each from New Brunswick and Prince Edward Island and five from Nova Scotia. Most of the delegates were experienced in administration and legislation. All the provinces including Newfoundland were represented in the convention.

The convention sat within closed doors, following the example of the Philadelphia Convention. The main ground urged for this course was that publicity would induce fresh, new and fierce agitation and imperil chances of compromise; but that once passed, the people would reconcile themselves to the agreed proposals. Newspaper correspondents from Canada, Great Britain, and America met at Quebec to report the proceedings of the convention. They sent up a memorial asking for facilities but the secretary of the convention declined to do so on the ground that no communication of the proceedings of the convention would be made until final conclusions were reached and submitted to the respective governments.

Mr. Kennedy vividly describes the situation thus "Men's hearts almost failed them because of fears. It is only possible to imagine the heated discussions, the clash of interests, the balancings of hope and despair, when behind closed doors strong men tried to crush down passion with the hands of creative faith. Joy came at length in the morning." The convention sat from October 10th to October 28th and in less than eighteen days, the famous seventy-four resolutions of the Quebec Convention were issued. Owing to the adoption of a policy of secrecy no regular records of the convention proceedings are available. It left no official record of its debates or events. A number of documents edited by Joseph Pope, the biographer of Macdonald, the leading architect of the convention, in 1895, and who had access to some of the convention papers constitute the main source of knowledge of its activities. Mr. Pope's publication is said to be based on fragmentary notes of the convention proceedings taken by its secretary.

#### THE WORK OF THE CONVENTION.

The convention first chose its chairman. Each province was given one vote. After general discussion, each province could retire to discuss the questions. Resolutions were given finality only after repeated considerations. The first resolution affirmed the principle of federation. The chances for a unitary form of government, *i.e.*, a legislative union, were remote. Quebec was totally opposed to any such union. It wanted only a federal union. The Maritime Provinces were of the same view. George Brown said "We had to take federal union or drop the negotiations. Not only were our friends of Lower Canada against legislative union but so were most of the delegates from the Maritime Provinces. There was but one choice open to us, federal union or nothing." Thus there was no choice open to the fathers of the convention on this question of federation. The position was still more clearly summed up later on by Lord Carnarvon, the then Colonial Secretary, in his speech during the debates in Parliament over the bill, when he said "It is true that no federation can be as compact as a single homogeneous state, though the compactness will vary with the strength or weakness of the central government. It is true that federation may be com-



paratively a loose bond but the alternative is no bond at all. Federation is only possible under certain conditions, when the states to be federated are so far akin that they can be united and yet so far dissimilar that they cannot be fused into one single body politic; and this I believe to be the present conditions of the provinces of British North America." Lord Carnarvon took the view that the Canadian Federal government owed its existence to the British Crown which would act as a permanent check over possible friction, between the centre and units in the new federation.

Although the Quebec convention decided upon federation and ruled out a union, still it realised the necessity for a strong federal centre to control the centrifugal forces. The fathers of the constitution had before them the lessons of the American Civil War which raged from 1861 to 1865. Macdonald insisted, that the defects found in the constitution of the United States should be avoided. Referring to that constitution he stated "The fatal error which they have committed . . . . . was in making each state a distinct sovereignty." He further declared as follows: "The true principle of confederation lies in giving to the central government all the principles and powers of sovereignty and in the provision that the subordinate or individual states should have no powers but those expressly bestowed on them. We should thus have a powerful central government, a powerful central legislature, and a powerful decentralised system of minor legislatures for local purposes." Macdonald wanted to reverse the position which obtained in the United States Constitution. The Quebec Convention adopted the principles enunciated by Macdonald. In this connection it may be noted that in 1916, Taft, an ex-president of the United States of America, wrote in a journal referring to Macdonald's exposition of what he conceived to be the errors of the American constitution, and showed how Macdonald was himself mistaken. Ex-President Taft wrote thus "There is danger that a great widening of the field of federal activity and a substantial diminution of State rights would in the end threaten the integrity of our union instead of promoting it." The difference between Canada and the United States was thus stated by Winter George M. Wrong: "Canada is a single state, in which the various units have prescribed powers; the United States is a union of many States, which have agreed to delegate certain powers to a central authority." Charles Tupper in his "Recollections of sixty years" later on said that there was "a wonderful accord among the various representatives in regard to general principles involved in drafting a basis of union." Lord Carnarvon during the parliamentary debates over the bill, forcibly and brilliantly supported the principles of Macdonald expounded at the convention and stated that the centre must be sufficiently strong and at the same time not so strong as to destroy local autonomy. He held the view that the resolutions of Quebec satisfied this test much better than the constitution of the United States in this respect.

Another problem which the Quebec Convention had to settle related to the organisation of the Senate. It was in the main a nominated body. The main grounds which were adduced against the elective principle for the Senate were that if it was based on election, it would claim rival powers over money bills and that the cost of Senatorial elections would be prohibitive. Senators were appointed for life. It is only a revising chamber.

The final resolutions of the convention were submitted to the Legislatures of the Colonies and they had to be accepted or rejected as a whole. Macdonald introduced the scheme in the Canadian Parliament in the ablest speech and traced the remote and immediate causes underlying federation. Brown recalling the conquest of Quebec by England said "Here sit to-day, the descendants of the victors and vanquished in the fight of 1759, with all the differences of language, religion, civil law, and social habit nearly as distinctly marked as they were a century ago." But the scheme was criticised in Canada on the main ground that a virtual treaty had been made by those to whom no such commission had been entrusted and that the terms of federation had not been submitted to the people. The Cabinet defended itself by stating that the whole question was under discussion from 1858, that supporters of federation had been returned in bye-elections and that no serious protests were sent up against the scheme. The draft scheme was approved by a majority in Canada.

But the course of events in the Maritime Provinces took an unfavourable turn. New Brunswick straightaway, appealed to the people, instead of Parliament and at an election, the supporters were defeated; only six candidates for federation were returned out of forty-eight. It was pointed out later that the scheme was put to the people, without its being explained in Parliament, and that if it had been fully explained the result would have been different. The other provinces rejected the scheme. But the fathers of the Canadian Convention never lost faith and undaunted by defeats laboured on incessantly.

A mission consisting of Macdonald, Galt, Cartier and Brown left for England. The Imperial Government assured support. The Governors were advised to exert their influence in the Maritime Provinces in favour of federation. Fenian invasions, the rivalry with United States of America, economic problems, the development of railways, all necessitated an urgent solution. The Maritime Provinces were made to feel their defenceless state and the importance of Union. In 1866. New Brunswick at an election to the Assembly swept the cause of federation and a resolution was passed urging steps towards federation. In Nova Scotia, after a struggle Tupper's motion was carried. Macdonald who was waiting for the turn of the tide left for England. Delegates from Canada, Nova Scotia and New Brunswick assembled in London at Westminster

Palace to frame resolutions. The conference passed sixty-nine resolutions on the lines of Quebec Convention and forwarded the same to the Colonial Secretary. Provision was made for future entrants like Prince Edward Island, and New Foundland. When the conference resumed, the Governor-General and the Colonial Secretary also attended. The conference drew up six drafts. The seventh draft was the outcome of the deliberations and consultations between the Imperial representatives and the members of the conference. Macdonald was the ruling genius of this conference. There was some controversy regarding the name of the new federation. Some suggested 'Kingdom of Canada' but it was thought this would offend the susceptibilities of the United States of America and it was dropped. The word Dominion was inserted in the final draft at the instance of Lord Derby who took note of an agitation in America against the introduction of monarchical forms there. The Bill was passed by the Imperial Parliament practically as presented with slight changes. In July, 1867, the Dominion of Canada was ushered in by Royal Proclamation. Only four Provinces joined first but there was provision for expansion on a large scale. To-day the Dominion of Canada embraces nine Provinces.

When the first Federal cabinet was formed by Macdonald, there was a clamour for representation by several interests, which he had to reconcile. Ontario, Quebec, Maritime Provinces claimed seats. French Canadians urged their racial claims. The Irish Roman Catholic minority wanted its place. The English at Quebec claimed representation.

#### THE CONSTITUTION.

The Constitution of the Dominion of Canada is partly written and partly unwritten. The unwritten includes the landmarks of English history, Magna Carta, Petition of Rights, Bill of Rights, Act of Settlement, conventions and usages. The written part includes a series of British North American Act from 1867 to 1943.

The executive authority is vested in theory in the Crown through the Governor-General and Governors. The Federal Legislature consists of a Senate and House of Commons. The House of Commons is a democratically elected body, has control of finance and is the driving force in the constitution. The Federal Legislature is given the general power. The Crown acts on the advice of Canada and rarely exercises its veto, and by convention this has been virtually abandoned. In theory all laws whether federal or local are enacted by the King in Parliament. There is Cabinet system of rule at the centre and in the Provinces. Only two provinces Nova Scotia and New Brunswick have a bicameral system of Legislatures. There is no system of federal courts as in United States of America. There is a Supreme Federal Court and a Court of Admiralty and Exchequer. The judges of the Supreme Court of the Dominion and the Supreme Courts of the Provinces are appointed for life by the Dominion Cabinet

and are recruited from the Bar on liberal scales of pay. Appeals lie to the Privy Council.

The Quebec Convention differed somewhat from a typical constituent assembly. It was not a body specially elected by the people for the sole purpose of drafting the constitution and further its seventy-four resolutions embodying the federation were not submitted to the people for ratification. In this connection it should be remembered that although the delegates to the convention were the nominees of the various Provincial Cabinets, the Provinces were enjoying responsible government, which meant an identity of interest between the cabinet and people. What was done by the Cabinet was really based on an implied agreement of the people. Again, although the terms of the constitution were not submitted to the people for approval, yet they were to be passed or rejected as a whole by Provincial Legislatures, which meant that a wider body than the Cabinets had to endorse the constitution. Hence the Canadian constitution was based on the consent of the people although this consent was expressed through channels different from that which was advocated by the strict adherents of the theory of constituent assembly.

#### CHARACTERISTICS OF THE CANADIAN CONSTITUTION.

The Canadian Constitution although framed by the Quebec Convention was technically enacted by the British Parliament but this was only an act of formality. The British Parliament passed the constitution prepared by the Quebec Convention into an Act without any modifications.

The subsequent History of Canada was marked by a magnificent expansion of Canada in territories and independence.

Diversity of race and of interest directed that the constitution should be a federation and not a legislative union. The French and the Maritime Provinces were against a unitary state, although the leaders of the Province of Canada worked for that end. In this connection the remarks of James Bryce in his treatise on "Modern Democracies" deserve our careful attention. "In a country inhabited by two races of a different language and religion, it might be expected that these differences would form the basis of political parties. This might have happened in Canada but for two causes. One is the federal system of government which has permitted the French speaking and Roman Catholic population to have their own way in that province where they form the vast majority, and which similarly permits the inhabitants of English speech and protestant faith who predominate in the other provinces to legislate there according to their own views. The other cause may be found in the party system itself, which has associative as well as disruptive power. On many questions, which have nothing to do with race or religion English speakers are in agreement with French speakers, protestants in agreement with catholics so that each political party



is composed of both elements neither of which could afford to offend and alienate the others."

The great distances between the colonies justified the necessity of a large measure of local self-government.

There was no great artisan or industrial population. Hence there were no radical elements and the conservative forces dominated. In temperament and sympathies men like Cartier, Macdonald and Brown far more resembled the type of the founders of the American Constitution than they resembled the radical statesmen who framed the Australian constitution.

While in Australia amendment of the constitution is by referendum, and in South Africa power of amendment is vested in its Parliament, in Canada, amendment of the constitution can only be made by the Imperial Parliament and not by the Dominion Parliament in Canada. Even in the Statute of Westminster 1931, this power of amendment vested in the British Parliament is preserved and continued.

#### SOVEREIGNTY OF THE DOMINION.

Is the Dominion of Canada, as established and evolved by the series of British North America Acts from 1867 onwards, a sovereign and independent state? The answer to this question lies in the fact that the Canadian Status of sovereignty and independence is more a matter of practice than of theoretical law. This divergence between actual practice and legal position is due to historical circumstances. This leads us to a consideration of the meaning and significance of the Dominion Status. The British Empire has been a loose aggregate of many possessions, colonies, dependencies and protectorates. Some have attained different degrees of independence. Egypt and Iraq have been made independent and their relationship with Britain was placed on the foot of a treaty. Eire has proclaimed openly her complete freedom of action, under the Government of De Valera. The Dominions of Canada, Australia, South Africa and New Zealand have become sovereign and independent in practice, although the formal imperial links are maintained throughout.

The status of the Dominions rested on usages and practices until 1926. In that year at an Imperial Conference of Prime Ministers of Great Britain, the Irish Free State, Canada, Australia, South Africa and New Zealand, a comprehensive statement of principles was made. It declared that these countries "are autonomous communities within the British Empire, equal in status in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown and freely associated as members of the British Commonwealth of Nations." By the Statute of Westminster, 1931, the Dominions were formally and legally declared sovereign and independent in internal

and external spheres and the jurisdiction of the Imperial Parliament was terminated. All legal restrictions were removed. In the case of Canada, however, at the request of Canada, the British North America Acts, were retained and the provisions of the Statute of Westminster were not fully applicable to this Dominion. It is stated that the Canadian section of the Statute may be removed whenever Canadians desire it. Thus the Dominions have been evolved into independent and sovereign states and their connection with Great Britain is made to rest on a purely voluntary basis. This is the position of all the Dominions to-day within the British Commonwealth. The test of sovereignty lies in the freedom of a state, to do as it likes; to send and receive diplomatic envoys, participate in international conferences, enter into treaties and agreements with other states, and as the "culminating point of sovereignty engage in war or remain neutral." The Dominions have perfect freedom to do all these at present. The Dominions enjoy representative and responsible governments modelled on the British constitution. The Governor-General represents the Crown. The Executive consists of the Ministry enjoying the confidence of the representative chamber and corresponds to the British Cabinet. The Legislature corresponds to the Lords and the Commons.

In the case of Canada, however, there are certain features in the Dominion constitution which led to a controversy about its sovereign powers. (1) Theoretically the Imperial Parliament alone under the British N.A. Acts can amend the Canadian constitution. This power is specially saved in the Statute of Westminster. (2) The Crown has a power of veto over dominion legislation. (3) Review by way of appeals to the Privy Council from Civil disputes exist. (4) The appointment of the Governor-General by the British Government. But all these restrictions are reduced to a bare formality. In the first place, the amending power of the Imperial Parliament is very formal. The British Parliament would neither refuse changes sought by Canada nor impose any not wanted by her. Secondly, the Royal veto on legislation has been abandoned definitely very early and never exercised. Thirdly, the appellate jurisdiction of the Privy Council is no doubt a real curtailment but this can be abolished if Canada chooses to do so at any time. Fourthly, the Governor-General is appointed on Canadian advice. The Crown acts in all matters only on the advice of Canada.

In defence and foreign policy Canada acts as an independent state. She exchanges Ministers with several states; she was a member of the League of Nations, International Labour Organisation, and the World Court. She is now an independent member of the United Nations Organisation. She has negotiated treaties and agreements independently with other states. In September, 1939, Canada declared War on Germany independently of her own accord, and at her own time and she was treated as a neutral till then for a few days. In practice she is fully independent and sovereign des-



pite the formal restrictions noted above, which are due to her historical connection with Britain.

The Canadian constitution is a mixture of American Federalism with parliamentary responsible government of the British type, adopted to the needs of Canada. There is a close connection between the Cabinet and the Commons to whom it is responsible. The constitutional system displays a distinctive combination of both legal and conventional interpretation. In matters pertaining to the interpretation of parliamentary Government, England is followed; and in matters pertaining to federal interpretation, American precedents are followed.

## THE AUSTRALIAN COMMONWEALTH.

In Australia, the movement for a federal commonwealth in the nineteenth century was the outcome of an evolutionary process and not of a revolution as in the case of the United States of America or of Ireland. The Australian constitutional convention which drafted the Commonwealth constitution was the most democratic constituent machinery conforming to the characteristics of an ideal constituent Assembly.

The Australian colonies were at first penal settlements. It was said of New South Wales that it was not really a colony at all. In the eighteenth century convicts sentenced to transportation in England were sent to America but after the Declaration of Independence by America, the process was diverted towards Australia and year after year convicts poured into that country. There was no regular constitution for the colonies and they were ruled by despotic Governors. Gradually a new class of farmers, explorers, planters and merchants grew up and new lands were occupied leading to the founding of new colonies. The system of rule by despots gave place to rule by Governors with councils by about 1823. Representation was given in the councils to colonial leaders. About 1838, a report was submitted against the system of transportation and its failure to reform criminals. The colonies and particularly New South Wales consisted partly of convicted criminals and free men. Emigrants and convicts were mixed up. Emigration to Australia was on a large scale. A movement for the abolition of the system of transportation and for self-government was afoot in New South Wales. By an order in council in 1840, transportation to New South Wales was abolished. Thus New South Wales became a free and prosperous colony and the demand for self-government was accelerated. An Act of 1842 gave to New South Wales representative government, but not to the other colonies. Western Australia, Southern Australia, and Tasmania were looked upon as backward and the last continued as a penal settlement still. Tasmania raised the cry "no taxation without representation", but the English attitude was that a convict colony had no right to free institutions. There was a demand for responsible government in New South Wales. Meanwhile anti-transportation leagues were started in eastern colonies. The colonies were united in their protest against this system. Finally the discovery of gold decided the issue, for convict labour was undesirable. By 1852, Tasmania also was emancipated from this curse and ships carrying convicts ceased to come to her shores.

From the constitutional point of view, this struggle of the colonies against transportation is of great importance. Long before democratic institutions were set up in the colonies, the people had

fought hard battles against privileged classes, the squatters and graziers, who were interested in maintaining the convict system. It was the artisans and workmen of the towns that had taken part in this agitation. It showed the growing strength of the labour movement in Australia.

By an Act of 1850, representative governments were introduced in Tasmania, Western and Southern Australia and the new colony of Victoria. New South Wales led the battle for full responsible government. Just at this time, the discovery of gold mines in Victoria and New South Wales changed the whole outlook for Australia. There was a rush of labour; men and women ran to dig gold. Tax Collectors found on deserted houses the notice "Mr. Collector, gone to the diggings, hope to pay you when I return". It raised the economic importance of Victoria and New South Wales and indirectly of the whole of Australia. Population went up by leaps and bounds. Labour became an important factor to be reckoned with. The demand for freedom and responsible Government could not be resisted. Henry Parkes of New South Wales led this battle for freedom in the same manner as he did against the system of transportation. The new democratic forces found in him a fitting leader. Although the main battle for responsible government was fought in New South Wales, there were movements to the same end in the other colonies also. By 1856, responsible government on the British model was conferred upon all the colonies. The new constitutions were introduced at a time when Australia was growing up at an extraordinary pace. The English plan of Cabinet government worked satisfactorily when well-organised parties had been developed, and when politicians had been trained in all the customs of parliamentary procedure. These things took time and the whole system was experimental, resulting in confusion for a time.

With the establishment of separate and independent and free colonies in Australia, the problems of inter-colonial unity came to the fore-front gradually. The earliest idea of a federation came from Deas Thompson, Colonial Secretary of New South Wales, who suggested that there should be a 'superior functionary' to care for the interests of Australia as a whole. This was the germ of federation. This idea was passed on to Earl Grey who at once realised its importance. He saw that the danger of inter-colonial conflict would be increased if all the other colonies were made as independent and self-governing as New South Wales, and he proposed that some central power should be set up to make laws for Australia as a whole. But all these proposals from Downing Street were viewed with suspicion and inter-colonial jealousy reigned supreme. After this, British Statesmen were unwilling to sponsor any new proposal and impose a federal constitution on Australia. They took up the attitude that the colonies should henceforth work out their own salvation in their own way and that the initiative should come from the colonies.

What was needed was to create a strong public opinion in Australia favourable to federation. The expanding interests and mutual relations of Australian colonies demanded a general arrangement and concert. Newspapers advocated federalism but the discussion was academic only. In spite of unity of race, language and religion particularism, and petty parochial issues were dominant. Gavan Duffy of Victoria colony who had championed the Irish cause in England, threw himself heart and soul for federation. But federation remained only as the vision of a few statesmen, and its real basis, *viz.*, the realisation on the part of the colonies that Australia must act as one nation for the promotion of their common interests, was still lacking. The Victorian Assembly had appointed a committee, with Duffy in it and its report was considered the ablest document ever written in favour of federation. With the failure of Duffy's efforts, in 1863, the problem of federation went into slumber for a time.

But the idea of a United Australia persisted. Ministers met annually in Conferences to discuss a common tariff policy. Defence, communications and immigration concerned the whole of Australia and a common central organisation was essential for dealing once for all with these problems. Federation was pushing itself to the front. In 1880, a conference of New South Wales, Victoria and South Australia representatives met and passed a resolution in favour of a federal council to deal with inter-colonial matters. In 1881, a conference of seven colonies met and considered the matter. While holding that the time for a federal constitution with federal parliament had not come yet, they felt that some form of federal authority to deal with common matters was necessary and that this would lead men to think in terms of federation and accustom the public mind to federal ideas, which would be the best foundation of the federal government. It was a step to prepare the way for the future.

In 1883, the threat of German expansion in New Guinea made the colonies realise at once the value of an Australian Union. Queensland in particular advocated an Australian Union forthwith. In 1883, the Australian Federal Council Act was passed by the British Parliament but this was ridiculed as ineffective and rickety by Henry Parkes who stood for a strong and effective federation. This Act came to nothing. It was fragmentary and imperfect although it was a step towards federalism.

In 1887, the question of naval defence of Australia was raised. The colonies had to pay for the increase of the Navy. At a conference of colonials in London the colonies agreed to pay a sum per year for their common naval defence and an English Officer was to inspect the Military defences. This was a solid step towards federation. Soon it was realised, that a common political Union in the shape of federation was necessary in the interests of Australian defence.



At this stage Henry Parkes began a vigorous campaign for federation. He suggested a conference of representatives from all the colonies. A conference (including New Zealand) of Seven Colonies met in 1890, at Melbourne. At this preliminary Conference, Parkins, Deakins and Griffith, carried the federal plan. Henry Parkes urged the creation of a strong federal government, which would at the same time preserve the individual rights of the colonies. The Conference suggested that the best way of doing this was to appoint a convention of representatives from all the colonies, delegates appointed by the authority of parliaments, who would fully represent the opinion of the people. This would be given the task of drawing up a federal constitution on a national basis. Such were the circumstances which led to the calling of the first Constituent Assembly of Australia.

#### THE SYDNEY CONVENTION.

The National convention consisting of delegates appointed by all the colonial governments including New Zealand met at Sydney on March 2, 1891. Here for the first time, Australian statesmen wrestled with the details of the subject of federation. The principle of federation having been admitted, there was no longer any necessity to dilate on general propositions. Ultimately, the Bill that became the Commonwealth Act of 1900 was the outcome of the labours of this convention. It was agreed that the federal constitution should be in design, from the very first, a complete legislative and executive government suited to perform the grandest and the highest functions of a nation. The advantages of a federation had to be paid for. The centre must be strong and powerful and at the same time it should not be too powerful in which case it would be a union and not a federation. On this question, the convention carefully considered the precedents of the United States of America (1788), Switzerland (1848), Canada (1867) and the German Empire (1871). The convention arrived at a compromise on this intricate problem. One of the suggestive points raised in the debates was how a federal constitution on the American model could be reconciled with British system of responsible government. It was said "Either responsible Government would kill federation or federation would kill responsible Government." In the Bill that was drafted, predominant position was given to the Lower House in matters of finance and taxation. The mode of constituting the Senate was an intricate question. The Australians were opposed to nomination. After these preliminary questions were thrashed out and settled, the convention set to work to draw up a Bill which was finished by April 9, within five weeks of its commencement. The Bill was referred back to the Colonial Parliaments for consideration.

The convention sat with open doors. The press and public were admitted. The wisdom of this course was questioned.

According to one view, publicity had its value for future guidance, according to others, it was fatal to the quick despatch of business. In this respect it followed a different policy from that of the American and Canadian conventions.

When the Bill was sent to the colonies, it did not meet with success, for the moment. The labour party which became dominant in New South Wales criticised it and the Parliament postponed indefinitely the discussion of federation. Henry Parkes Ministry also fell from power, with the result that the question of federation was shelved for the time being. The lead of New South Wales failing, other colonies were hesitant.

In 1892, Henry Parkes proposed a different method of approaching the problem. He had no hopes of accomplishing federation through parliamentary action alone. Federation is a thing which concerned the people and so it has to be taken out of the hands of Parliaments, which failed to reach a conclusion. That was his attitude. "The only plan", he wrote, "for the people themselves, the electors themselves, throughout the colonies to elect another convention to revise the draft constitution of the late convention or to frame a new Bill if in their wisdom they think proper to do so." But the people of Australia were now more concerned with economic issues created by the depression than with politics and these proposals were not heeded to.

What was necessary was the creation of a public opinion amongst the rank and file of the people in favour of federation. In 1893, the Australian Natives Association, a social and political organisation took the lead in the matter and a big conference was held which recommended that the various Legislatures should pass enabling acts, providing for the election of representatives to attend a statutory convention or congress to consider and draft a constitution, which should then be submitted by a process of referendum to the verdict of each colony. The chief point is popular support at both ends (1) Popular election of delegates and (2) submission to the electors for their approval or disapproval.

#### THE ADELAIDE CONVENTION.

This time New South Wales accepted this plan and its lead was followed by the rest, except Queensland. Western Australia chose its representatives not by popular vote as in the case of the other colonies, but by the two Houses of Parliaments. Each State sent ten representatives making a total of fifty, and they duly met in Adelaide in March, 1897. They closely followed the procedure of the convention of 1891, and took up as the basis of their work the bill drawn up by it. Mr. Barton of New South Wales, who had made a special study of federation undertook the duties of



Leader of the convention. The discussions were begun *de novo* on resolutions covering four hundred pages of double columns.

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South Africa comprising its four colonies, the Cape Colony, the Orange River Free State, the Transvaal, and Natal, had all the advantages for a strong common Government but it was here that deadly local and racial conflicts occurred and it was only gradually and after great difficulties that the principle of unity gained acceptance even among the whites.

These colonies under the British Empire passed through the usual stages of colonial status, representative institutions and independent responsible government. When the colonies became internally independent and self-governing, inter-colonial conflicts arose. As a matter of fact, these colonies were not separated by any great physical barriers as to make them separate entities and the Europeans formed one body politic. Though the English and Dutch fought against each other in the Boer War in 1899, which lasted for three years, both the races were deeply attached to the soil and intensely interested in the development of its vast resources.



The causes of inter-colonial conflict were many. In the first place each colony had its own tariff laws. Questions of customs duties led to bad feeling. Secondly, Railway rates constituted a potent and constant source of strife. The construction of every new line with consequent alteration of trade routes from the ports, was a signal for trouble. As an instance of fanaticism may be mentioned the incident in which the Orange River Colony wanted to construct a railway line to Kimberly which would affect the Kimberly trade. Cape Colony refused to allow any junction to be made with its line at Kimberly. The Orange Colony threatened to build a line and transport the goods by wagons for three miles. The Cape Colony retaliated by threatening to erect a wire-fencing throughout. Finally some adjustment was made after bitter conflicts. Thirdly, the problem of the treatment and control of the natives and the Asiatics like the Indentured Indians in Natal and the Chinese labour in the markets, gave rise to discordant views and conflicting modes of dealing with the same. Lastly bilingualism, English or Dutch language was a source of hatred and jealousy. The discovery of gold in the Rand gave Transvaal an importance and strength to compete with Cape Colony and all this resulted in the Boer War.

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of an anonymous pamphlet styled "The Government of South Africa" which summarised the case for a union by placing the materials for forming a sound judgment on the question of union, had a great educative value. It was at this time that Lord Selbourne, High Commissioner of South Africa, published his famous memorandums pointing out the utter artificiality of disunion. In a special memorandum he pointed out the supreme importance of the unification of the whole railway and transport system. In these circumstances a conference summoned at Pretoria in 1908, to deal with tariff and Railway rates wisely decided that the only satisfactory settlement lay in the adoption of a wider political union. It adopted the following resolutions:—

A. That in the opinion of the conference, the best interests of the permanent prosperity of South Africa can only be secured by an early Union under the Crown of Great Britain, of the several self-governing colonies.

B. That to the Union contemplated in the foregoing resolution, Rhodesia shall be entitled to be admitted at such time and on such conditions as may hereafter be agreed upon.

C. That the members of this Conference agree to submit the foregoing resolutions to the Legislatures of the respective colonies and to take such steps as may be necessary to obtain their consent to the appointment of delegates to a National South African convention whose object shall be to consider and report on the most desirable form of South African Union and to prepare a draft constitution.

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that of the Quebec Convention of Canada. It is interesting to compare the composition of this convention with those of U. S. of America, Canada and Australia. The American convention was conspicuous for its University men. Out of fifty five delegates who attended, a large number had high university attainments, thirty-three of them were lawyers and many of them had held high positions. It was an ideal body. The Canadian convention was noted for its large number of men of vast experience in administration or legislation. The Australian convention contained radical elements, a strong contingent of labour and in addition was famous for its large proportion of talented lawyers and men of great constitutional erudition. The South African convention was different in character. Unlike America the farming elements preponderated in it. Out of thirty-three a majority had farming interests. There were ten lawyers, two or three commercial men, two journalists, and three ex-officials. In contrast to the Philadelphia convention university men were far less.

A remarkable feature in the composition of this convention lay in the fact that former bitter enemies sat together in peaceful comradeship to shape the future destinies of their common country. Dr. Jameson who raided Transvaal to overthrow its government, General Botha of Transvaal who wanted Dr. Jameson to be shot as a free-booter, Sir George Ferrar who was condemned to death by Gregoreiski, a Judge of Transvaal and now a member of its Parliament, General Smuts and Hull, former opponents, and several others who formerly were sworn enemies, now turned into fellow-delegates, all sat together, for a common task forgetting past animosities. General Botha, Steyn, Smuts, De la Rey and De Wet were among the leading figures on the Dutch side. Dr. Jameson, Sir George Ferrar and Sir Percy Fritz Patrick were the leading men on the British side. Besides, there were men experienced in local politics.

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According to one view, publicity had its value for future guidance, according to others, it was fatal to the quick despatch of business. In this respect it followed a different policy from that of the American and Canadian conventions.

When the Bill was sent to the colonies, it did not meet with success, for the moment. The labour party which became dominant in New South Wales criticised it and the Parliament postponed indefinitely the discussion of federation. Henry Parkes Ministry also fell from power, with the result that the question of federation was shelved for the time being. The lead of New South Wales failing, other colonies were hesitant.

In 1892, Henry Parkes proposed a different method of approaching the problem. He had no hopes of accomplishing federation through parliamentary action alone. Federation is a thing which concerned the people and so it has to be taken out of the hands of Parliaments, which failed to reach a conclusion. That was his attitude. "The only plan", he wrote, "for the people themselves, the electors themselves, throughout the colonies to elect another convention to revise the draft constitution of the late convention or to frame a new Bill if in their wisdom they think proper to do so." But the people of Australia were now more concerned with economic issues created by the depression than with politics and these proposals were not heeded to.

What was necessary was the creation of a public opinion amongst the rank and file of the people in favour of federation. In 1893, the Australian Natives Association, a social and political organisation took the lead in the matter and a big conference was held which recommended that the various Legislatures should pass enabling acts, providing for the election of representatives to attend a statutory convention or congress to consider and draft a constitution, which should then be submitted by a process of referendum to the verdict of each colony. The chief point is popular support at both ends (1) Popular election of delegates and (2) submission to the electors for their approval or disapproval.

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of the constitutional lawyer and the historian difficult. The main sources of knowledge of the work of the convention are (1) Sir Edgar Walton's "Inner History of the National Convention of South Africa"; (2) "Union of South Africa, 1909," by the Hon'ble R. H. Brand, himself, Secretary of the Transvaal delegation in the convention; and (3) Professor Walker's "Lord De Villiers and his times". These works are stated to reveal only the general currents of opinion in the convention and not the actual debates and proceedings. The policy of strict secrecy that was adopted was considered to be a wise course, "because the questions that had to be handled were so delicate and the feeling in the country was so keen and discordant, that it was not conceivable that an agreement could have been reached in public. The public was made to realise that the result would be a compromise. The public had to wait and pass its judgment after final conclusions were reached." We are therefore deprived of the valuable arguments adduced in the successive steps leading up to final decisions. It is said that the Transvaal delegation was assisted throughout in the convention by a staff of constitutional lawyers and experts and this delegation presented a solid front including English and Dutch and greatly influenced the convention.

The main questions which were debated in the convention and which presented difficulties related to (1) Form of the constitution—Unitary or Federal, (2) Native Franchise, (3) Constitution of the Provincial Councils, (4) The language controversy, and (5) Fixing the capital.

On the first question of the form of Government, it is said that to start with opinion was in favour of federation but the delegates under the leadership of Smuts compared the constitutions of U. S. of America, Canada and Australia and finally came to the conclusion that federation was not desirable and that a strong common unitary type of Government should be established. The main ground which impelled the delegates to this view was the fear of the native problem and the realisation of the necessity for a strong united Government capable of prompt and combined action in the face of such a problem. Other arguments were based on the appreciation of a common treasury, common economy, uniformity of laws and statutes and one great Railway system.

As regards the native franchise, only in Cape Colony it was extended to natives but not in other colonies. A compromise was reached on this matter, under which the delegates of Cape Colony did not insist upon the extension of the native franchise in other colonies, with the result that the natives and coloured people were excluded from the Union Parliament. The *status quo* was maintained as regards these people and a different system of Government was decided upon for them.



On the question of the constitution of the Provincial Councils, the convention wanted to establish a Council of a non-party character. A non-party Executive Council was constituted on the Swiss model.

With regard to the bitter language controversy, English and Dutch were both declared to be the official languages. Regarding the fixing of the capital, a device was adopted by which the seats of power were distributed. Parliament was to be at Cape Town, the Civil Service centre was located at Pretoria; while the Court of Appeal was located at Bloemfontein. The Orange-River-State became the centre of Railway organisation.

When the final draft was made, it was sent to the Provincial Parliaments for ratification. It was a unitary constitution. In Transvaal there was no opposition. In the Orange-River-State some important amendments were suggested. In the Cape Colony, against the opinion of the delegates, numerous amendments were put forward and in Natal countless alterations were brought up. The re-assembled convention at Bloemfontein considered these amendments and final approval was then sought for. There was a proposal for a general referendum but the Dutch dismissed this as a newfangled idea. In Natal a referendum was resorted to which resulted in a majority approving the constitution. The Orange-River-State is said to have accepted the draft with a "wry face". Except in Natal, the revised final draft constitution was submitted straight-away to the parliaments and not to the people directly.

Then the Provincial Parliaments submitted addresses to the Imperial Crown for giving effect to the new draft. Delegates were then appointed to go to London to agree to any minor amendments, which would not affect the basic principles of the draft. In England, fifty-three amendments not affecting substance or principles but relating to formal and minor matters, were made in the bill before introduction into the Imperial Parliament, by agreement between the delegates and the Secretary of State for the Colonies. The bill was then passed by the Imperial Parliament without any further alteration and it received Royal assent on September 20, 1909. A proclamation was issued on December 2, 1909, declaring that the new constitution embodied in the South African Act would come into force from May 31, 1910.

Here it may be interesting to note the attitude of the British Government towards the exclusion of the natives from the new constitution. The Earl of Crewe, the then Secretary for Colonies in his speech, referred to this exclusion, and the effect of this on the minds of the subjects other than those of European descent and criticised it. But he at the same time justified the neutrality of the attitude by saying that as the natives had no votes in other parts of South Africa except Cape Colony, they could not be included in the Union Parliament. He quoted the Australian precedent as an instance of a similar restriction. The Earl of Crewe stated

that he did not want to wreck the prospects of Union by pressing inclusion of native franchise. He declared that if a change was to be made, it was to be made at South Africa itself, by South Africans themselves, and that he could not force it upon the representative body which was against it. He referred in eloquent terms to the fusion of the warring European races in the Union.

The South African convention embodied the characteristics of a typical constituent assembly. The delegates to the convention were chosen by the Provincial Legislatures specially for the purpose of drafting a new constitution. The convention did its work unhampered and unfettered by any outside interference. The final draft was submitted to the Colonies for approval. As in the case of all other conventions experts on constitutional matters played a dominant part in the shaping of the constitution.

#### NATURE OF THE CONSTITUTION.

The South African constitution is of the unitary type and as such deserves a close study. Legislative power is vested in the King, a Senate and a House of Assembly. The Provinces are ruled by administrators with Provincial Councils. There is a Supreme Court of Justice at the top with numerous inferior Courts. As regards amendment of the constitution, it is made easy in the Act. There is no complicated process or any referendum. The South African Parliament itself can amend the constitution in the same way as it brings about ordinary legislative changes.

According to Dicey, there are three main characteristics in a federal constitution:—(1) Supremacy of the constitution, (2) Distribution of different powers among bodies with limited and co-ordinate authority, and (3) authority of Courts to act as interpreters of the constitution. The South African constitution possesses none of these characteristics. In South Africa, the Union Parliament is supreme. In the United States of America and in Australia the constitution is the supreme law of the land. It is the source and basis of all legislative authority. It is the foundation of the State. Legislatures, Executives and Courts are bound by it. In the case of Canada, the Canadian Parliament cannot change its constitution at all, except through the Imperial Parliament, in theory, now at any rate. But in South Africa under section 152 of the Act, the Parliament is empowered to amend the constitution: "Parliament may by law repeal or alter any of the provisions of this Act." Until recently, *i.e.*, till the enactment of the Statute of Westminster 1931, the only serious limitation upon the Union Parliament and its sovereignty was its subordination to the Imperial Parliament. The laws which it enacted should not be repugnant to those of the Imperial Parliament under the Colonial Laws Validity Act of 1865. What Dicey says about the British constitution is equally applicable

to the South African Parliament. "Fundamental or so-called constitutional laws are under our constitution changed by the same body and in the same manner as other laws, namely, by Parliament acting in its ordinary legislative character."

Again there are no co-ordinate State Parliaments and no distribution of powers between Centre and States, which is the foundation of the federal structure. In South Africa there is a responsible Government at the Centre but none in the Provinces as in Canada and Australia. South Africa is modelled on Great Britain. Provincial Councils can be overridden by the Centre. Finally, there is no vesting of the judicial power in any Court as in a Federal Judiciary. Courts are entirely subordinate to Parliament and have no power to question the validity of the laws.

As regards the sovereignty of the South African Dominion<sup>5</sup> upto 1931, there were restrictions in external matters and to some extent over its jurisdiction although in practice after the first World War, the Dominions were practically becoming sovereign and independent both internally and externally. In 1931, the Statute of Westminster removed all legal restrictions previously imposed upon the Dominions. By the Statute of the Union Act, 1934, which implements the Statute of Westminster the sovereignty of the Union Parliament is declared. In the last Second World War, when Great Britain declared war on September 3, 1939, the South African Union was not automatically involved in war as in 1914 but its Parliament considered the alternative of a permanent neutrality before decision. It joined the war on September 6 and thus remained a neutral for three days.

## IRELAND.

The circumstances under which the Irish constituent assembly was called into being for framing the modern Irish Free State constitution were somewhat different from those of the other Dominions in the British Empire. Students of History are quite familiar with the long and tough struggle which Ireland underwent for achieving her independence. As observed by a writer, "The Irish movement for freedom represented a physical force-movement maintained in almost unbroken continuity over a period of centuries through a long chain of political insurrections, economic revolts and secret organisations." With the emergence of the Sinn Fein revolutionary party during the first World War, there was a turning point in the Irish struggle for liberty. In 1919, the Sinn Fein party captured all the seventy-three parliamentary seats outside Ulster and the members refused to take their seats as usual in the British Parliament at London but instead set themselves up as a Sovereign Parliament of Ireland at Dublin, issued a Declaration of Independence and set up their own Government on January 21, 1919. This Irish Parliament was the first Dail Eireann.

To counteract this move, Britain passed the Government of Ireland Act 1920, by which it partitioned Ireland into the North (Ulster) and the South and established two Irish Parliaments. This step led to anarchy, guerilla warfare, repression and reprisals in the country. The futility of this chaotic condition was finally realised, and both parties, the Irish and the British entered into negotiations for the peaceful settlement of the problem by means of a treaty.

The Irish people stood for national unity and independence and they were uncompromising on these two issues. The situation was thus summed up "Ireland is a nation and it is upon a like foundation that we believe the Irish Constitution should now be built. There is room for compromise in details and even on secondary questions of principle and there is abundant room for compromise of the wisest kind in the form of safeguards for the minorities inside Ireland, without limiting the powers of Ireland as a whole."

A treaty was concluded between England and Ireland in 1922 and this treaty established the Modern Irish Free State. The treaty accorded to Ireland the same constitutional status in the British Empire as the British Dominions. The treaty closely followed the Canadian model in the main, barring minor deviations, and assimilated the Canadian usages and conventions in the definition of Ireland's relationship with Britain. Under the terms of this treaty, the Sovereignty of the people of Southern Ireland was recognised subject



to the suzerainty of Britain, and the new Irish constitution based on the will of the people, was to be drawn up by a newly elected Parliament as provided in the Government of Ireland Act, 1920, which was practically on the basis of universal suffrage and this Parliament was to convert itself into a constituent assembly for the purpose of framing the constitution.

The treaty gave rise to a split in the country and the Sinn Féin party led by De Valera resigned from the Government. Thereupon Arthur Griffith, the Chairman of the Irish Peace delegation, formed the new government. He was also elected President of Dail Eireann. Thus the Dail Eireann continued to function along with the newly elected Irish Parliament. The Dail Ministry also continued. The Southern Irish Parliament formed a new provisional government headed by Michael Collins as per terms of the treaty. The personnel of the Dail Ministry and the provisional government was almost identical. When the Civil War broke out subsequently owing to the split over the treaty, the Republican party was disbanded and the Third Dail was then elected. A single provisional government was formed with Cosgrave as President and the dual position of Dail and Parliament was swept away. The Third Dail sat as the Provisional Parliament and also as the constituent assembly, as envisaged by the Treaty. The Irish people adhered to the theory of a Constituent Assembly which was then in vogue throughout Europe, and became a popular machinery for establishing new constitutions.

Before this constituent assembly began its task, much preliminary work was done in the matter of drafting the constitution. After some controversy regarding the value of rigid written constitutions, it was decided to draw up the new instrument as laid down by the Treaty. A constitutional committee was set up consisting of Michael Collins, the then head of the Provincial Government, as Chairman. This committee was given a month to prepare the draft. The committee instituted a study of the world constitutions. The theoretical and dogmatic constitutions of Europe, however experimental, appealed to the republican spirit of the Irish. The committee prepared three schemes and on the basis of these, the Provisional Government made its own final draft and sent this to Britain for consultation. This original draft was never published. The later debates in the constituent assembly showed that the British view demanded rigid adherence to the letter of the Dominion framework, while the Irish wanted to liberalise it in the direction of republicanism. The final draft as agreed to between the representatives of the two governments was published on June 15, 1922, on the eve of the new elections to the new Parliament which was to sit as the constituent assembly as per terms of the Treaty.

The committee, which under the Chairmanship of Michael Collins was entrusted with preparatory work, was small and included

men of diverse training, administrative, commercial, political, legal and academic. It took for its material chiefly the constitution of the United States of America and the Germanic Republics. It had no liking for the empirical constitution of England. The Provisional Government and the Dail closely scrutinised its work.

The Constituent Assembly, *viz.*, the Dail Eireann finally met on September 9, 1922, and commenced its session on September 18. It consisted of about one hundred and thirty members elected on the widest franchise. The republican deputies abstained from the assembly. Other groups which at first refused to come, now joined the assembly. The group of labour delegates constituted an opposition as it were. The delegation from the Dublin University furnished an intellectual element to it. On fundamental questions, the Provisional Government counted on a clear majority.

The Constitution Bill was introduced into the Constituent Assembly by the President. The whole assembly subsequently went into a committee. Several revisions were effected in the draft regarding the structure of Government. The Bill was finally approved on October 25, 1922. The debates in the Assembly centred mainly on monarchical form versus republican spirit; while the labour group gave expression to socialistic views which had contributed to the Revolution.

By a Confirmation Act, the British Parliament passed the Irish Free State Constitution Act, 1922. This constitution was brought into force by Royal Proclamation. Under this constitution, the Free State was to embrace the whole of Ireland, thus nullifying the principle of partition, which was the basis of the Government of Ireland Act, 1920. The constitution then laid down the conditions of inclusion for the six northern protestant counties of Ulster. Thus the Government of the Irish Free State was a Government for the whole of Ireland. The Treaty, however, contained provisions under which the six northern counties or such territory as was defined by a boundary commission, might elect to continue under the provisions of the Government of Ireland Act, 1920. Ulster was thus given option of being under the Irish Parliament separately on the basis of local self-government as an integral part of the Irish Free State.

Some of the striking features of the origin and nature of the Irish Constituent Assembly may be noted:—1. The Constituent Assembly of Ireland was the result not of a process of constitutional and peaceful evolution as in the case of the other Dominions in the British Empire but was the outcome of a national revolutionary movement to throw off age-long foreign rule by force. Ireland stood at this juncture in the same position as the United States of America after the Declaration of Independence, although there was no complete severance of British connection. The idea of a constituent assembly which was then prevalent in the continental countries was transplanted

and assimilated by Ireland. The device of Dominion Status was found to strain the republican spirit and this was evidenced by the entire process by which the final constitution was established and worked out.

2. The Dail Eireann which was elected and converted into a constituent assembly for the sole purpose of drafting the new constitution rigidly maintained its constituent character, leaving all normal functions of legislation and Government to be exercised during its sittings by the Provisional Government.

3. While the Dominion constitutions which were drafted by the various conventions were embodied in Acts of Parliament the Irish constitution was the result of a treaty between Ireland and England, in which the sovereignty of the Irish people and their independence was fully recognised. By the second Article of the Treaty, the external relation of Ireland to the British Crown and Parliament was assimilated to the law, practice and constitutional usage of Canada. The Treaty constituted the most revolutionary settlement within the frame-work of the British Empire based on the will of the people in the garb of Dominion Status.

4. While the Dominions were ushered by Acts of Parliament, the Irish constitution was inaugurated by the King's Proclamation. During the debates in the Constituent Assembly, there was a controversy as regards this method of Royal Proclamation. It was argued that this detracted from the sovereignty of the Irish people. On the other hand it was defended by the ministers in charge of the Bill, as representing a definite announcement of renunciation and withdrawal on behalf of the Crown.

5. The Irish Constituent Assembly was a sovereign body based on the authority of the Irish people. The constitution that was adopted was essentially based on the enactment of this body. It was explained that the sovereignty of the constituent body was not denied by the Conforming Act of British Parliament. Conformity and subjection to the Treaty did not derogate from sovereignty of the assembly. In this respect the Irish position was analogous to Article 178 of the German Constitution Act which made that constitution subject to the provisions of the Treaty of Versailles, but this did not detract from the sovereignty of the German constitution. The Treaty was without prejudice to the integrity of the Irish Free State, as the Versailles Treaty was without prejudice to the integrity of the Reich. Further it was proclaimed that the constitution that was adopted and approved by the British Parliament was the same as was adopted and passed by the Constituent Assembly. The British were only concerned to see if the draft constitution was in strict conformity with the Treaty.

6. A new form of oath was introduced in Irish Parliament by which allegiance is first affirmed to the Irish Free State and then to the British Crown in respect of common citizenship in the Empire.

7. The preamble of the Irish constitution is unlike those in the Dominion constitutions. It affirms the undoubted and God-given right of the people and proceeds to lay down the Irish constitution (called Saorstát) in accordance with the Treaty. There is no reference to the suzerainty of the British Crown or the British Parliament.

8. Unlike in the Dominion constitutions of Canada, South Africa and Australia, a Declaration of Fundamental Rights is included formally in ringing terms in the Irish constitution. No such declaration exists in any of the constitutions in the British Empire including Britain. In this respect, the Irish were mostly influenced by the American, French and Continental models. The doctrine of an abstract declaration of Fundamental Rights of man exercised great fascination on the revolutionary Irish mind. This feature marks a break with the British constitution and it is given special and emphatic precedence over the functional sections of the constitution, and a characteristic feature of all revolutionary ages leading to new constitutions. The Fundamental Rights embrace, rights of State, the classic safeguards of individual liberty and social reforms.

9. In the matter of future amendments to the constitution, the Irish constitution follows in principle the Australian procedure of referendum.

10. In the Irish constitution, the power of judicial review which is vested in the Central Courts of the Irish Free State constitute them the guardian of the constitution. In this respect Ireland follows the example of the United States of America. This power of judicial review is not accepted in the continent. In France no such power of courts is admitted; in Switzerland judicial review is allowed regarding only cantonal laws but not in federal laws; in Germany no such power is given, although opinion was keenly divided on the issue. It was in the United States of America that the principle was established that the Acts of the Legislature could be reviewed by an independent body as to their conformity with the constitution.

The Irish constitution is a unitary one and not a federal structure and in this it is on the lines of the South African Union. Ireland being a small and compact State has no need for federation. The idea of a federation or confederation between Ulster, and the rest of Ireland was mooted but failed.

The Irish State has a two-fold inspiration. It is moulded in the frame-work of a Dominion Status, but it derives its origin from the Irish people (in the exercise of undoubted right) 'that all lawful authority comes from God to the people.' The Irish freely copied and assimilated the virtues of other constitutions, so as to suit them to their own genius and thought. The Irish constitution thus combines the features of British, Dominion, Continental, American and other patterns.



By a plebiscite of July 1, 1937, a new constitution was adopted for Ireland. Under this, Ireland is no longer to be treated as a member of the British Commonwealth, as under Art. 1 of the constitution of 1922. The Treaty of 1921 is ignored in this respect. Throughout, Ireland had been asserting her right to act independently in all internal as well as external affairs. In the last war, Ireland took an independent course and exercised her right of neutrality till the end.

Under the new constitution, executive power is vested in an elective president and a Cabinet with a Prime Minister on the British model. The president is liable for re-election but only once at the end of seven years. All Bills require the signature of the President. The Legislature consists of the Senate and the Dail. The Senate is constituted on the basis of functional representation, such as the Universities, national language, literature, art, education, professional interests, agriculture, fisheries, labour, industry and commerce, social services, etc. The Senate acts as an advisory body suggesting amendments. The Dail represents the lower house elected on universal franchise irrespective of sex and is the supreme legislative body. The new constitution created a Council of State, representing a body of elder statesmen, having advisory powers only. Judges are required to make a declaration to observe the new constitution, in order to get over the difficulty of the old constitution of 1922, regarding the Crown. In the judicial system of Ireland there are special military tribunals for dealing with public peace and order. The new constitution claims for Eire the whole of Ireland including northern Ireland, all islands and territorial waters, asserting right of legislation and Government over these. But pending the integration of all territory, the previous position is observed. Ireland is declared in this new constitution a sovereign, independent and democratic State. The English language is given only a second place. As regards Fundamental Rights and principles of social justice, the new constitution contains elaborate provisions in the direction of social reform. Insistence on the importance of home-work for women is made. The State has to see that organs of public opinion, the press, the radio and the cinema, shall not be used to undermine public order or morality or the authority of the State—provisions which are said to be technical infringements on individual liberty. As regards connection with Great Britain in any manner, the Irish along with the nationalist party of South Africa Union Government, headed by Hertz, stand uncompromisingly for the assertion of the right of secession. General Smuts is opposed to this. In the case of Australia and New Zealand, the question is not of practical importance since the naval defence of these places requires a common interest with the mother-country.

## FRENCH CONSTITUTIONAL EXPERIMENTS.

France achieved democracy by a sudden stroke of revolution and not by a slow and gradual process of evolution as in the case of England, Switzerland or the United States of America. Abstract theories and principles took firm hold on the French national mind, with the result that France after the revolution became a vast laboratory of constitutional experiments, rival schemes, and attempts to find universal panaceas. The French Revolution was a destructive one and its main contribution to France and to the world lay in the democratic doctrines and principles propounded by its protagonists.

Before the revolution, there was no freedom or democracy of any kind in France. Despotism reached its zenith under Louis XIV in the eighteenth century. The States-General had not been summoned since 1614. The masses, the peasants, workers and the middle classes counted for very little. The monarchy, the feudal nobility, and the clergy conspired to oppress them. There was very little of local self-government in towns or rural areas and the entire government was powerfully centralised in the Bourbon despotism which ruled through its officials. There were no constitutional guarantees for the citizen and the very idea of liberty was forbidden. In such soil the seeds of Revolution were sown. New and stirring ideals were flashed forth which caught men's minds. The writings of Rousseau, with his social compact and the sovereignty of the people, of Voltaire and of Montesque, awakened the people and created a new intellectual and moral fermentation, of which Paris became the centre. The example of the American Declaration of Independence had its own influence on the course of events. The outburst of Revolution in 1789, the meeting of States-General, the resistance, intrigues of the king and his dethronement and eventual execution along with his consort are all matters of history. The extreme republican elements which followed the first attempts at Government inaugurated a Reign of Terror which was most destructive of the ancient regime, a kind of total and ruthless purge. In one word, the French Revolution razed to the ground monarchy, nobility, clergy and swept away all titles, and distinctions of rank. It was a political and social revolution.

Between 1789 and 1799, four constitutions were made, of which only two were put into force, the first constitution of 1791, drawn by the first national Constituent Assembly and the last constitution framed by the second National Assembly in 1795 establishing a Directory. Between 1793 and 1795, the second Constituent Assembly sat for a long period of three years and the first constitution prepared by it and known as the First French Republic and another radical.

constitution framed by the revolutionary Jacobins were put aside and not given effect to. From 1799 to 1870, Monarchy and Republic alternated in France and after a series of experiments in Government, and attempts at revival of monarchical rule, finally in 1871, the Third French Republican constitution was established which is the one in force to-day in France. The Second French Republican constitution was established in 1830 after another Revolution but it was overthrown by Monarchy again. Thus three forces, *viz.*, Monarchy, conservatism and Republic were contending for mastery in French politics after the Revolution and the Republic triumphed in the end in 1871.

The first and historic Constituent Assembly of France was convoked under the following circumstances. On May 5, 1789, the States-General met. The King appeared and made several promises evincing interest in the people. Subsequently the Third Estate, the Commons, invited the other orders to act together but the response being poor, in a stormy session on the night of June 16-17 the Third Estate decided to act independently and forthwith organised itself into an Assembly Nationale. On some pretext, the hall of Versailles was closed to the Commons, who then decided to meet in the old Tennis Court and there amid scenes of tremendous enthusiasm they took a solemn oath to remain in session "until the constitution of the kingdom be established and affirmed on solid foundations." The Tennis Court was also closed by the King's brother on the ground that he wanted it for a game. The Curie of Saint Louis placed his church at their disposal. The King appeared and threatened this National Assembly but Mirabeau stepped forward and in words which rang throughout Europe challenged openly Royalty. Paris was seething with excitement. The National Assembly decreed the inviolability of its members. It took the new title of "Assemblée Nationale Constituante" on July 9, and addressed itself to the task of framing a new constitution. The king indulged in a series of provocative and repressive Acts. Then the grand assault on Bastille took place, an event which thrilled Europe.

The Constituent Assembly met at Paris. It became an arena of conflict and strife between rival schools of thought. It was broken up into groups. Discussions centred more on abstract sentiments than on devising a practical machinery for the Government. Its course was stormy and tortuous. Mirabeau and Robespierre were the leading personalities at this period. The National Assembly drew up a constitution in 1791, the first popular constitution of France. It enunciated the principles of the Revolution which formed the theoretical foundations of the French constitutional experiments. The National Assembly promulgated the historic and famous Declaration of the Rights of Man, affirming the principles of equality, liberty, fraternity, the sovereignty of the people and other inalienable and imprescriptible natural rights of man. The Declaration laid

down the Rousseauite doctrines "that all sovereignty resides essentially in the nation" and "the Law is the expression of the general will." This Declaration of the Rights of Man is the peculiar and distinctive characteristic of the French Revolution and the doctrine moulded the French constitution in the same way as the Declaration of Independence did the American constitution. Edmund Burke attacked this doctrine and ridiculed it as unpractical sentimental stuff, while Sir Thomas Paine vigorously defended it in his "Rights of Man." It was welcomed by its adherents as the focus and symbol of the human rights, the Bible of the Poor and as the title-deeds of the human race. The doctrine of the natural rights of man exercised profound influence on men's minds and got a firm hold on the European mind. Its impress is seen in almost all the constitutions of Europe.

After promulgating this Declaration of Rights of Man, the National Assembly established a new frame of government under which, a limited monarchy (deprived of initiative and powers), a unicameral legislative chamber elected on property qualification, and a uniform system of local administration were set up.

The National constituent assembly was composed of one thousand two hundred delegates, out of whom one half were the representatives of The Third Estate chosen indirectly by all French men of the age of twenty-five and above, whose names were on the tax rolls. It was fairly representative of the people. While the Assembly was in session, political and revolutionary clubs were exerting their influence hourly and daily on its proceedings. The Jacobin club was the leading one. Mirabeau fought hard to establish a constitution on the British model but in vain. With his death at this critical period, the only moderating influence and the one man who could grapple with the situation, disappeared, and the King who was a captive and lingered on with intrigues, lost hope and fell with his consort during the Reign of Terror which followed. With the fall of the King, the more revolutionary elements headed by La Fayette assumed the executive powers of the Crown.

The constitution of 1791 was short lived. It was not a republican constitution as one would have expected nor was it calculated to be a lasting institution as the one drafted by the Philadelphia Convention of America. The foundations of a new and permanent order were not laid down and the constitution disappeared in the midst of anarchy, after a year of its existence. One of the errors committed by this National Assembly was that it voted itself against future entry into the new Legislative Assembly called under the new constitution. It passed an unwise Act that none of the members should be eligible for the new Legislature, with the result that the few men who had learnt something of the business of politics could not come in. The new Legislative Assembly was consequently composed of young and inexperienced men, without any knowledge of public affairs. During the Revolutionary period, another National



Convention was elected on universal manhood suffrage by indirect election and this second Constituent Assembly sat for three long years from 1793 to 1795, during which it drafted two constitutions one in 1793 and another in 1795. In 1793, the First French Republic was established under which, Royalty was abolished, and a unicameral legislative chamber and an executive body were to carry on the Government. This constitution was submitted to the people and ratified by them. But the constitution could not be put into force as anarchy set in. The National Assembly became the scene of violent contentions between Girondins and Jacobins. The Jacobins were uncompromisingly radical. The Girondins were defeated and the Jacobins led by Danton, a talented lawyer, and Robespierre and Marot seized power and there was a Reign of Terror. The Jacobins drafted a Republican Constitution but owing to internal anarchy and grave external danger from foreign foes, none of these constitutions were given effect to. It was decided to devise another governmental structure to meet the emergency and in 1795, the National Convention drew up a constitution suited to the emergency. This is known as the constitution of the year III (1795). The object was to establish immediately a strong central government which will be able to cope with the internal and external problems. The constitution provided for a bicameral Legislature and a Directory of five chosen from the Legislature. Strong men were placed at the helm of affairs and the pendulum swung from revolution to conservatism and centralisation in France. This constitution known as the Directory lasted till 1799.

The second National Assembly which was called in 1793 sat for three years and dissolved itself in 1795. During the three years of its stormy existence, it enacted many salient permanent reforms. It repelled foreign foes and acted as a restraint on the destructive and anarchical forces let loose by the Revolution. The constitution of the year III was a moderate one based on a limited electoral franchise with property qualification. The Central Government was strong and powerful. There was a complete separation of the legislative and executive functions. The preamble of the constitution contained a curious moral dictum "No one can be a good citizen, unless he is a good son, a good father, a good brother, a good friend, and a good husband." This constitution, in a sense, paved the way for a new despotism.

In 1799, the Directory was overthrown by Napoleon, the first Consul. Napoleon's meteoric rise to power swept away democracy completely. Through a series of military victories, he established an absolutism in France once again. His assumption of Imperial title was ratified by a plebiscite of the people. Napoleon was defeated at the battle of Waterloo and was banished in 1815. Meanwhile the brother of Louis XVI (Bourbon) was restored as a kind of constitutional monarch (Restoration). An elaborate constitution closely modelled on the British constitution in all its outlines and

details was drawn up, fully imitating the unwritten constitution of England. But the "Bourbons learn nothing and forget nothing." The Bourbon kings could never imbibe the spirit of the British constitution. There was a second revolution in 1830 and the King abdicated. But this revolution of 1830 did not lead to the framing of a new constitution by a constituent assembly but it resulted in a mere change of monarchs. France thus lost a golden opportunity of enacting a great Republican constitution. There were no parliamentary traditions. Louis Philip of Orleans and after him Charles X ruled France. Deadlocks and confusion arose. In 1848, the Third Revolution took place, which resulted in the establishment of the Second French Republic, which lasted till 1852.

In 1848, after the abdication of the Bourbons, a provisional government was formed and it introduced a universal suffrage and on this basis a Constituent Assembly was elected consisting of nine hundred members. This Assembly framed a simple constitution on the American model, with a president invested with full powers, and a single chamber Parliament. The British model was rejected this time *in toto* as unsuited. While establishing this second Republican constitution, the National Assembly eschewed all communistic tendencies shown by other revolutionary elements. This constitution lasted till 1852, when it was overthrown by Napoleon III.

Napoleon III, nephew of Napoleon, who was in exile in England went to France, got himself elected to the Assembly, and by lavish promises and exploiting Napoleon's name, became President of the Republic. At the end of four years, he refused to quit the office and with the help of the army arrested his opponents and manipulated a plebiscite vote of the people proclaiming him as Emperor Napoleon III. "With the name I bear I must be on the throne or in prison," he said. The Second Republic thus ended, and the Second Empire was ushered, which lasted from 1852 to 1870. During this regime a bicameral Legislature, with an influential Senate was revived. Napoleon III had not the brilliance of Napoleon as soldier or statesman but he managed somehow to rule for eighteen years. It was an era of peace and prosperity.

The year 1871 saw the fourth Revolution in France. Napoleon III was defeated in the Franco-German War and taken prisoner. Paris was besieged by the Germans and a treaty had to be settled with the conqueror. Under the terms of the treaty with Prussia, a new Constituent Assembly was elected to negotiate the terms of peace. A provisional Government of National Defence was formed under the head of Thiers. The Assembly was elected on the widest franchise and power having fallen into abeyance with the Empire, it passed into the hands of the Assembly. It consisted of seven hundred and fifty members, a cumbrous body and met at Bordeaux. It was conservative and monarchical in outlook.

There being no constitution in force, the Assembly was regarded as the sovereign and the repository of all power. In the meanwhile, the commune of Paris rose in revolt and repudiated the Assembly and the provisional Government but it was put down. It is said that Lenin and Marx drew much on this commune but it remained only an episode in French politics.

After settling the treaty with the Prussians and getting rid of the foreigner, the Assembly then began to frame a new constitution and the Third French Republic was proclaimed. The provisional Government carried on and Thiers having resigned, Macmohan became the President. The Assembly took four years for its task of establishing a new Government. It was predominantly conservative and monarchical but these groups were divided as to the line of succession, with the result that the Republicans were able to have their way. The conservative elements wanted a conservative Republic, while the Republicans would like to have some kind of Republic rather than any form of monarchy or restoration. The result was a compromise. In 1875, three constitutional laws were enacted by this Assembly which constitute the modern Government of France and after enacting these simple laws, this long-lived Assembly dissolved itself. Unlike in the United States of America, the constitution of France is contained not in one document but in three. The National Assembly which framed these constitutions in 1875, had received no mandate or commission from the French electorate to do so. It was elected during the Franco-German War, hastily, to settle peace terms with Germany. It was not a body specifically called for framing a new constitution for France. The suffrage law of the Second Republic was used for its election. Further, neither in 1875, nor afterwards the constitution was submitted to the approval of the people by the National Assembly and the people never troubled themselves about the question of ratification. This constitution was a more practical one, than all the previous experiments.

The first constitutional enactment provides for a president of the Republic and deals with his powers. It also lays down the procedure for the amendment of the constitution. The other two documents deal with the Legislature and the relations of Public Powers. In 1884, certain changes were made. The constitution provides for a bicameral Legislature, a Senate and a chamber of Deputies, who have power of electing in joint-session of both Houses by an absolute majority the president of the Republic. Amendment of the constitution can be made not by the ordinary action of the Legislature, but by both Houses of the Legislature sitting together in one body as a Constituent Assembly. Preliminary to this, each chamber must separately declare the need for revision. The law of 1884 declared that the principle of the Government cannot be the object of the revision. There is no declaration of rights as before. As observed by James Bryce, "taken together these constitutional laws constitute, the shortest and simplest, the most practical and the least rhetorical

instrument of Government that has ever been enacted in France." According to another authority, "The constitution makers of 1875 had rendered the Republic acceptable by stripping it of its revolutionary aspects and given it vital powers by endowing it with certain fairly well-balanced forces." The constitution was not the result of any anxiety on the part of the Constituent Assembly to frame a lasting fabric. It could not agree on the fundamentals of the constitution. Of the nine constitutions which France experimented between 1789 and 1870, this proved the most lasting. The constitution was an incomplete patch-work. No great enthusiasm was displayed in drafting it. It contained twenty-six articles without proper arrangement. The whole thing was just a compromise between monarchists and republicans. No great ideals were proclaimed by it.

French institutions form a composite structure in which every new regime for the last century and a half left its mark. As observed by a writer "each experiment left its alluvial deposit."

Legal sovereignty in France resides in the National Assembly. When convoked jointly, as a Constituent Assembly, there are no limits to its powers; it can do anything. Its decisions are final and cannot be questioned by courts. No ratification of the people is required but it is not likely that the Assembly will embark on measures which have not got the backing of public opinion.

The President's office is described by some as weak. He is the supreme executive authority of the State, the highest honour to be coveted. He is the Commander of the Air, army and naval forces, the total head of the State and symbol of its unity. The President has great powers in theory but all this he must exercise only on the advice of his cabinet. It is of the British Parliamentary type and not on the American model, although the President is elected for a fixed term. France is a Parliamentary Republic not a Presidential one. The Cabinet is responsible to the Parliament. The President of the United States of America is independent of the Legislature, being elected directly by the people. His ministers are responsible to him; he can dismiss them, and they are not answerable to the Congress. The constitutional parallel for the French President is the constitutional monarchy of England, Holland, Belgium, Italy and Norway. His ceremonial part is vital and great. The legislative powers of the Senate and Chamber are equal except as regards financial bills. "Though the Senate has less force" it has more "finesse" as observed by a writer.

One outstanding and peculiar feature of French politics is the absence of two clear-cut political parties, an essential condition for the success of Parliamentary Government. This has led to the instability and short life of the ministers. French politics is characterised and dominated by groups or committees, which play an important role in the public life and in the Legislatures. This state of affairs is attributed to several causes which have not conduced to the growth of the two party system.



The Third French Republic came to an end when Germany conquered and occupied France in 1940, and there was no constitution in force for nearly five years. After France was liberated again in 1945, the people elected a Constituent Assembly and a constitution drafted by this body was rejected by a referendum of the people in October 1945. This constitution provided for a single chamber with a nominal President. It was the handiwork of the socialists and communists who wanted to concentrate all power in a single chamber and not in the executive. The republicans on the other hand pressed for a bicameral Legislature with a President with greater powers. Single-chamber or bicameral system of Legislatures has always been a controversial matter in the constitutional experiments in France. After the rejection of the last May draft, a second Constituent Assembly was elected and the constitution drafted by it was approved at a Referendum held in October 1946. This ushers the Fourth French Republic. This latest constitution provides for a bicameral Legislature. The Senate although not a powerful body has the function of a revising chamber. The constitution provides for the election of the Lower House on the principle of proportional representation. As under the Third Republic the President is to be elected not by the people but by the two Houses. Power is vested in a cabinet which is responsible to the Lower House. The British Parliamentary type of Government is followed. How far the new constitution will ensure the stability and strength of the cabinets is in the womb of the future. The communist group shows signs of increasing strength of late but how far this will go is again a matter of futurity.

## CONSTITUTION MAKING IN GERMANY.

Germany presents an interesting study to the student of comparative politics and Government. Before 1914, Germany stood as the most efficient and the most militarised State of Europe; yet it went down in 1918 in the First World War. It then established a modern democratic constitution but in 1933, the dictatorship of the Nazi party came forward and Germany built up once again, the most perfect military machine of the world and rose to great industrial and scientific heights; yet in the last World War, Germany for the second time collapsed in 1945. Germany is to-day administered by an Inter-Allied Commission.

To understand the constitutional experiments in Germany, it is necessary to trace a bit the historical background of the country. There are certain clear landmarks in the growth of Greater Germany. (1) The period before the German Confederation of 1815. (2) The Germanic confederation dominated by Austria from 1815 to 1848. (3) The Frankfurt Constitutional Assembly and its attempt to establish a democratic constitution in 1848. (4) The appearance of Bismarck and the Bismarckian constitutional regime. (5) The Revolution of 1918 after the surrender of Germany in the First World War and the establishment of a constitution by the Weimar Constituent Assembly. (6) The rise of the Nazi party and its collapse.

### THE GROWTH OF GERMANY.

Germany was the last country to achieve unity in Europe. After the fall of the Holy Roman Empire, Germany became a conglomeration of petty States, feudal divisions, and principalities, ruled by potentates and constitutional liberty was unknown. In the eighteenth century, the masses and the peasants were steeped in stupor and were not a factor to be counted in Government. Ecclesiastical Electors, Imperial Knights, Princes and oligarchies seized power. Frederick the Great, of Prussia, was the first Emperor who established an orderly Government in the Germanic States. He styled himself the servant of the people, substituting the doctrine of service for the divine right of Kings and under him Prussia became the leader of Germany and one of the great military powers in Europe. He ruled efficiently, from 1740 to 1786, and set an example of benevolent despotism in Europe.

About this time, there was also an intellectual awakening in the country. There was a crop of journals devoted to literature, philosophy, society and art. The writings of Rousseau came at this stage, and exercised potent influence on men's minds. The American Declaration of Independence gave warnings to the rulers. A liberal movement spread in the country. Men of liberal ideas, excluded

from power in their own country, felt themselves as citizens of the world. Schiller said "I write as a citizen of the world who serves no prince". The French Revolution also came in handy at this stage. The French Revolution received the grandest reception in Germany. The Declaration of the Rights of Man captivated the German Intelligentsia. When France decreed in trumpet-tones the downfall of feudalism, it thrilled the whole of Europe. The fall of Bastille was described by Swiss historians as the happiest event since the birth of Christ. Odes to liberty were poured forth. Kant and the philosophers praised it. University students planted trees of liberty. Goethe declared "Here and to-day commences a new epoch of world history and you can boast that you were present at its birth". A great event took place, *viz.*, the foundation of the Berlin University by Von Humboldt, which was destined to become a world seat of learning and research.

A new spirit of nationalism and patriotism arose and there was a sudden swing from cosmopolitan radicalism and universalism to patriotism and particularism in Germany. The youth were stirred by new national songs which created in them a passionate desire to break tyrannies and foreign rule. But men's hopes could not be realised. There was a dark cloud overhanging Europe. Napoleon had risen in France and was bestriding Europe like a colossus. He overran Prussia by defeating the Germanic forces at Jena and marched on to Moscow. Soon there was the retreat from Moscow and Napoleon was defeated at the battle of Waterloo. Prussia came out as a victorious ally and at the Congress of Vienna 1815, a new constitution was established for the Germanic States. The temporary Napoleonic conquest of Prussia and the overrunning of the States had a tonical effect over Germany. It roused a consciousness of common interests amongst the Germans. By extinguishing a large number of small States and kingdoms, Napoleon had cleared the ground for a new structure.

#### THE CONFEDERATION.

The Congress of Vienna established the new Germanic confederation consisting of Austria, Prussia, and thirty smaller States. It was a league of free and sovereign States. Its chief organisation was the Bundestag or Diet sitting at Frankfurt presided over by Austria. This Diet lasted for half a century. It was a mere aggregation of States without common interests or means of defence. In the Diet Prussia and Austria were fighting for mastery and their antagonism paralysed its activities. The States were inclined to support the leadership of Prussia.

The Germanic confederation of 1815 somewhat resembled the Articles of Confederation which existed in the United States of America prior to the establishment of the constitution by the Philadelphia Convention in 1787. It had no powers of taxation. It could not enforce its decrees. It proved a fizzle from the start.

Owing to the faction between Prussia and Austria in the Diet, deadlocks arose. Neither power was strong enough to control the other but each was powerful enough to block the other's progress. The Diet achieved nothing and was the butt of ridicule in Europe. It went on with its wrangles and intrigues.

As already noted, the examples of French and American Revolutions and the new intellectual awakening led to liberal movements in the land. There was a demand for liberty and unity in all States, which could not be resisted. In such circumstances in 1847, Frederick William IV of Prussia summoned eight Provincial Diets for a conference at Berlin for deliberation. The speeches of this conference were reported in the press, which was a great forward step in itself, at that time. But the Emperor refused to introduce constitutional reforms.

#### THE FRANKFURT CONSTITUENT ASSEMBLY.

In May 18, 1848, without waiting for the permission of rulers, the liberal leaders summoned a preliminary German Parliament (Vorparliament) to Frankfurt to make arrangements for the election of a National Assembly to draft a new constitution. This Congress or convention of six hundred delegates met at Frankfurt on the Maine and proceeded to draw a constitution, democratic in character, which would establish a united German Empire in place of the discredited confederation. This assembly consisted of the best minds of Germany and its composition was an ideal one from the point of view of talent, character and service. The two chief movements on which efforts were concentrated during this period in Germany were (1) Reconstruction of Prussia and (2) The attempt of the Frankfurt convention to win liberty and unity by peaceful discussion. The professors of Constitutional law played an important part in this task.

The Frankfurt convention was presided over by Heinrich Von Gagern, its elected President. At the opening he declared "We have to frame a constitution for Germany and we derive our authority for this purpose from the sovereignty of the nation. It is difficult indeed, virtually impossible, to accomplish it by any other means. Germany desires to be one, a single State, ruled by the will of the people with the co-operation of all its members."

The delegates of the German convention were in a similar situation as those of the Philadelphia convention of the United States of America and had an opportunity presented to them of establishing lasting institutions for their country. They had to end the defective confederation system and draw up a new Government suited to the needs of Germany. They had to lay the foundations of German unity and at the same time promote liberty. But unlike the American convention the Frankfurt Assembly laboured under many difficulties. It was too numerous and unwieldy to be capable of adequate teamwork. It was too badly torn by divisions. There was more of visionary idealism and less of hard practical experience. Finally



the spirit of compromise and political adjustment was conspicuous by its absence.

After long and weary debates the Assembly agreed on a constitution in January 1849, under which a strong federation, with an Emperor, a Cabinet, a double-chambered Parliament, with the Lower House elected on manhood suffrage were the chief functionaries. The King of Prussia was to be *ex-officio* the Emperor of Germany. But Austria, Prussia and some other States declined to ratify the plan, being ruled by mediaeval ideas. The King of Prussia refused to serve as Emperor. The constitution did not come into force. The Old Diet went on as before. Although the movement came to nothing, the Frankfurt Constitutional Assembly had an educative value. It started new ideas and set the people thinking. As observed by a writer "Though the constitution was still born, the conception of German unity was embodied for a brief space in concrete form."

In 1850, in Prussia a separate constitution was introduced. A two-chambered Parliament, on a limited suffrage was established. This constitution remained in force in Prussia till 1918 and was replaced by another in 1920 after the revolution in Germany after the first World War.

The chief obstacle to German unity and the establishment of an acceptable constitution at this period was the inclusion of Austria in the Germanic system. Austria was a stumbling-block to the growth and progress of Germany. It contained besides a large population of Germans, also non-Germans like the Magyars, Czecks, Jugoslavs and Poles. Prussia's aim was to eject Austria from the German confederation but Austria firmly resisted. At this time Frederick William IV of Prussia retired in 1856 and his brother Prince of Prussia became the Regent. An attempt was made to disenter as it were the Frankfurt constitution and bring it to force but the King threatened to abdicate. It was at this critical moment and confusion in the history of Germany, that Bismarck appeared upon the scene.

#### BISMARCKIAN CONSTITUTION.

King Frederick died in 1861 and the Regent succeeded him to the throne of Prussia. A bitter conflict ensued between the King and Parliament, with the result that the King thought of abdication in favour of his son. The Crown Prince (Kaiser) was even summoned but Roon, a supporter of the King, suggested the idea of calling Bismarck who was then ambassador in Paris to be the head of the Ministry. Bismarck was called on 22nd September, 1862, and he assured support to the King in the task of reorganising the army. Bismarck seized the great opportunity to carry out his plans for the unification of Germany. Son of a landlord born in 1815, after a sound education, he entered the Prussian Parliament early and worked his way to an ambassadorship in Paris. Bismarck declared "The great questions of the time will be decided not by speeches

and resolutions of majorities, that was the mistake of 1848 and 1849, but by blood and iron" and this reverberated throughout Europe like a thunderclap. He carried a series of military reforms. He was a man of superhuman skill and he knew how to play his cards. His first duty was to eject Austria which he did by defeating her at the battle of Sadowa. In freeing Germany from Austrian yoke, and uniting the whole of Germany under one strong rule, Bismarck achieved the same goal which Cavour did in Italy. Although their methods differed, the two statesmen had similar aims, *viz.*, freedom and unification of their country.

After the expulsion of Austria, Bismarck laid down the constitution of the German Empire. He created a federation of the States under the giant leadership of Prussia. But France refused to allow the South German States to join this Empire and they formed a separate Rhineland federation. It was in July 1871 after the surrender of Paris, that these Southern States also joined Bismarck's North German Confederation. Bismarck did not call a constituent assembly or convention to draft the constitution for the twenty-two German States. It is said that he himself dictated a draft constitution. He called a convention of delegates from the States to ratify his draft, which done, the first Reichstag under the new constitution also ratified the draft in 1867. This North German confederation being joined by Southern States in 1871, remained the constitution of Germany until the Revolution in 1918.

The Franco-Prussian war broke out which was short and decisive and the Emperor of France was taken prisoner and Paris surrendered in 1871. The Southern German States were freed and they adhered to Bismarck's confederation. The proclamation of the new Empire was made at Versailles in January 1871. Under this constitution, the King of Prussia assumed the title of the Emperor of Germany and Bundsrat and Reichstag became the Parliaments of the Empire. Unlike the ancient regime which collapsed during the French Revolution, and unlike the Romanoff Empire of Russia, which broke down, and both of which were based on force, this Bismarck's German Empire was based on popular forms in name. Bismarck's Constitution was a clear and concise document and created a strong centralised executive, elastic enough for expansion and growth. But this German federation was not a federation of equal States as in the case of the United States of America but of varied strength and influence and as such not federal in the true sense. The German federation was not a federation in the American sense. Prussia occupied a dominating position and claimed a lion's share.

Under Bismarck, the German Empire emerged united and strong and became the most powerful State in Europe. Germany perfected an efficient civil service which became a model for the world. The nightmare of civil strife and foreign invasions was ended. Bismarck was one of the greatest diplomats and front rank statesmen

that Europe had produced. As observed by a writer "Europe was his chessboard on which he knew every move of the game and on which no rival could challenge him with hope of success." He was a man of Destiny, a man of blood and iron. Immediate issues appealed to his mind, not ultimate foundations. The idea of a European Commonwealth on spiritual foundations did not appeal to him. His credo was that nothing should stand in the way of German unity. Even Parliament should be brushed aside. In three wars in seven years, he brought down Austria, France and Denmark. He was not of common clay but a super-diplomat. "Physically also he was massive and powerful, with strength written in every line of his iron countenance." His critics styled him a Machiavellian. The goal of his diplomatic strategy was one war and one front at a time. According to him Germany should never get into a war on two fronts with the odds against her. He cajoled France while he dealt with Austria, he humoured Austria while fighting France. He cultivated friendship with Russia and took care not to antagonise England. In 1890, he ceased to be chancellor, being removed and Caprivi succeeded him. Bismarck as he himself confessed was not versed in economics or finance very much. He died in 1898.

After the death of Bismarck, there was no single directing hand in Germany. William II, the Kaiser, was at the helm of affairs. During the twentieth century, Germany was transformed into the strongest military power in Europe. Great strides were made in industry, commerce, banking and shipping. The State took the initiative in the industrial and military organisation of the nation. Germany became rich and powerful. There was a fillip given to the study of science. As observed by a writer "the Germany of Kaiser was one of experts, of statistics, of regulations, of standardisation, of consummate team-work." The Cult of Nietzsche raised the State to a superhuman force. War was glorified and was even considered a biological necessity by some philosophers. There was a phenomenal growth in education and scientific research. The object of education was to create a disciplined race of citizens. The Germans conceded to their academic lights an influence unapproached in any other country. By 1913, Germany had perfected the strongest military machine. The Kaiser realised the importance of fleet and created the new navy and constructed the Keil Canal.

In 1914, Germany plunged into the World War, into the causes and course of which it is unnecessary to enter in this discourse. Suffice it to say that in 1917, there was a rout and the German army which was at first invincible and dashed on, gave way at all points of the front. There was a rapid breakdown and the revolt in Keil Canal and the Navy hastened the collapse. On November 9, 1917, the Kaiser abdicated. Workers and soldiers organised everywhere on the soviet model. Kings, Dukes, and princes gave up their authority to provisional councils in the States. Thus Germany was transformed

into a socialistic republic in a few days without much bloodshed. Two great events in 1917 hastened the Revolution. The Russian Revolution of March 1917 and the American entry into the War. The Revolution was more a collapse than a revolution by any planned ideals.

#### THE WEIMAR CONSTITUENT ASSEMBLY.

The collapse and the defeat raised a revulsion of feeling against the rulers and the old regime. Provisional councils seized power everywhere. Frederick Ebert, a saddle-maker by trade, and leader of the social democrats formed a council of six members, consisting of social democrats and independent socialists. The Independent Socialist party wanted an economic revolution also at once on the soviet model of Russia. The social democrats gained the upperhand. Then the Spartakists (communists) rose in revolt but they were suppressed.

The Ebert provisional Government issued a proclamation that the German people would be called upon to elect a constitutional convention to establish the future Government. This provisional government signed the armistice. Accordingly in January, 1919, the Constituent Assembly was elected, consisting of four hundred and twenty-three delegates including thirty-nine women delegates chosen by universal suffrage on the principles of proportional representation. Weimar, a place of cultural glories and free from Spartakist influence, was chosen for its meeting. The Assembly met at Weimar in February, 1919.

#### ITS COMPOSITION.

The Weimar Assembly represented all parties. The social democrats constituted the largest party with one hundred and sixty-five delegates; then the Center or Catholic party; then the progressives; and finally the conservatives or nationalists. The composition was such that no one party could dominate and compromise was inevitable. Ebert became the provisional President and a Ministry was formed.

#### PROCEDURE OF THE CONVENTION.

The Government caused a report to be prepared. Hugo Preuss, Minister of Interior, in the provisional Government and a Professor of constitutional law was entrusted with drafting the constitution. His draft was adopted by the Government and published. There was criticism against his plan. Then a constitutional committee representative of all the States was formed and it took Preuss report as its basis and elaborated it. The final draft was presented to the Constituent Assembly. After four days' debate on the general features of the draft, it was referred to a committee of twenty-eight members chosen from the political parties in proportion to their strength. After three months, the committee presented its report to the Assembly taking a middle path between a unitary



type of structure and particularism. After much trimming and touching up, the constitution was adopted by the convention on July 31, 1919, and it came into force on 14th August, 1919. The Weimar constitution was debated with German thoroughness line by line. It was the work of the nation not of any one party. The constitution represented a compromise of past, present and divergent views and interests. The party of Democrats led by Preuss took the most decisive part in the framing of the constitution. The socialists threw their weight to strengthen the Reich against the States. The constitution was not submitted to the people for ratification. However it was drawn by sincere democrats who wanted to start their country on a fresh course.

The Weimar Convention began in February 6, 1919, and ended on July 31, 1919. It took a recess of two months, while the peace negotiations went on. It did not like the Philadelphia prototype, eat a farewell dinner and dissolve. It continued in existence until a new Reichstag was elected. During its sittings, the greatest interest was evinced in the country. A flood of newspaper and pamphlet literature was let loose making all sorts of suggestions. The whole country got a few months course, as it were, in the study of comparative politics.

#### NATURE OF THE WEIMAR CONSTITUTION.

The Weimar Constitution is the longest and the most prolific document of its sort. It is stated that it contains ten times as many words as that of the constitution of the United States of America. The constitution provides for an Executive, a bicameral Legislature and a Supreme Court. The chief executive authority is vested in the President and a Cabinet. The President is elected directly by universal suffrage for seven years with a right of re-election. There is no provision for a Vice-President in the constitution. The first President elected by the Constituent Assembly, Ebert, continued till the new elections were completed in 1925, by which date he died. The President was to be chosen by the whole people and no particular mode of choice was laid down. In the first Presidential election in 1925 out of eight candidates, Von Hindenburg was elected. There are provisions in the constitution for the recall of the President. The powers of the President as in France are enormous. He is specially invested with emergency powers, the power of promulgating ordinances, which gives scope for dictatorship. The President can issue decrees having the force of law and set aside existing provisions. Courts have generally upheld his authority. All laws must be signed by the President. With regard to the office of the President Germany copied nothing from the United States constitution but borrowed some features from France.

The Constitution provides for a Chancellor and Prime Minister responsible to the Reich. As in all Parliamentary Governments, the

ministers act together, with individual and collective responsibility. The Cabinet has ordinance-making powers.

The Reichstrat represents the States and Free Cities. Its composition is according to population with a limit on the quota of Prussia. The Reichstag, Lower House, is elected on the principles of proportional representation unlike in England and America. The Reichstag is vested with unfettered power of taxation. It has exclusive jurisdiction in matters of foreign policy and defence. It differs from the United States constitution, where residuary power is vested in States.

Following the example of America power of adjudication is vested in the courts on the question of apportionment of boundaries of jurisdiction. There are administrative courts as in France.

The most notable part of the constitution is Part II which provides an elaborate declaration of fundamental rights and duties of citizens. This German Bill of Rights differs from the American, in that it is more specific and political precepts are grouped with economic guarantees. The declaration of rights embraces the whole life of the citizen in all details. It is not merely an abstract declaration of rights such as freedom of speech as in the case of America or France. It is a comprehensive list of the civil rights of the citizen, reflecting socialistic ideals. Its inclusion was justified as a declaration of solidarity with the modern world. The old bureaucracy mechanism of administration was continued to carry out the new policy.

Article 165 of the Constitution provided for workers' councils and economic councils to deal with all matters relating to labour and industry. The National Economic Council was an important advisory body in the German constitution.

The German Revolution was more political than economic unlike in Russia. The problems of the new Government were the legacies of the war. The constitution that was drawn by the Weimar Assembly was one of the most democratic in the world. It was drafted by one of the ablest constitutional lawyers of Germany, Hugo Preuss. It steered clear of autocracy and at the same time, attempts at proletariat Dictatorship also failed. It was a clear break from the past. The preamble of the constitution strikes a note of democratic idealism. "This constitution has been framed by the German people at one in its branches and animated by the desire to establish its federation on the solid bases of liberty and justice, to serve the cause of peace both within and without and to promote social progress." Article 1 recites "The German Federation is a Republic. Supreme power emanates from the people." Article 17 lays down the important and basic condition, "Every state must have a republican constitution. The representatives of the people must be elected by the universal, equal, direct, and secret suffrage of all German subjects, men and women in accordance with the principle of proportional representation."

The German constitution, according to historians and the opinion of jurists, is federal in name and form but in reality it is neither federal nor unitary but a composite one. The constitution is so ordered, that the federal aspect has less vital importance than the unitary aspect. The Reich, the Centre is all powerful.

The rise of the Nazi Regime under Hitler and the perfection of a most industrialised and militarized State, a perfect war-machine for the second time and its collapse in 1945, are matters too recent to be commented upon and we must await the verdict of historians and posterity on the dramatic course of events that have happened in Europe and Germany. In the field of diplomacy, and in the strategy of the wars, Germany under Nazi rule, was unable to follow the dicta and testament so carefully laid for her by Bismarck, with tragic consequences. With the disappearance of militaristic and totalitarian ideals and regimes, the prospect of the rise of a new and changed German nation in harmony with the new world order is ever there.

## THE SWISS CONSTITUTION.

Switzerland is the oldest of democracies. Popular institutions were developed in it far earlier than in any other part of Europe. As a Federal Democratic State, it ranks as high as the United States of America. The Swiss political institutions always attracted the attention of the students of politics and statesmen and thinkers. During the American Revolution, the Americans evinced particular interest in the study of the Swiss confederacy and its institutions. The Swiss people had from the earliest times developed free institutions in a quiet and businesslike manner, without any dazzling theories or rhetorical declarations of principles and it is worth while for other nations to study, and assimilate the great virtues of their political system.

The Swiss people have achieved unity although they are not in any sense a homogeneous nation. Switzerland is a small country inhabited by three races, speaking different languages, having no common language and containing a majority of Protestants and a strong minority of Roman Catholics. Two-thirds of the population speak German, a large number speak French, some speak Italian, and others speak Romanach or Latin languages. The Catholics and Protestants are mixed up in some cantons and different languages are spoken by them. Racial intermixture is low and the basis of co-operation lies in commercial intercourse, or literature or politics and rarely, on inter-marriage. Despite all these differences the people of Switzerland are fully united together in defending their federal, cantonal, and local liberties. Patriotism is the highest virtue of the Swiss people.

Switzerland started with three cantons which formed into a league for defensive purposes in the earliest times and gradually expanded into a confederacy with thirteen cantons by the fourteenth century. These thirteen cantons banded together into a league for defensive purposes. In 1648, the Swiss confederacy was recognised as an independent and Sovereign State by the Treaty of Westphalia. The rural cantons were pure democracies governing themselves directly in meetings of the people. The urban cantons like Berne were oligarchical although mixed with popular elements. There was a Diet for offensive and defensive purposes. Each canton was sovereign and independent. In the Diet unanimity was required and the cantons acted on the instructions of their people. There was no central executive. The confederacy was a loose one and it was much worse and weaker than the United States of America under the Articles of Confederation prior to 1787.



After the French Revolution, Switzerland became a prey to foreign rule and conquest and for a time she became a vassal of France. Napoleon revived the confederacy as a step towards conciliation. After the fall of Napoleon, the Congress of Vienna, 1815, recognised the old Swiss confederacy.

While foreign danger had to be repelled and the Swiss had to be on their guard, civil war broke out inside in 1847. The seven Catholic cantons formed themselves into a separate league for the purpose of preserving their catholic independence and to prevent any action by a majority of cantons towards unity. These separatists were even prepared to summon foreign aid and intervention from France and Austria to achieve their end. Thereupon the Protestant cantons by a majority in the Congress of the confederacy, decreed the dissolution of the Catholic league. The Catholics resisted this but they were defeated and suppressed. This is known as the Sonderbund war. This clearly convinced the Swiss people that the political fabric of a confederacy was very weak, and unsuited for the situation and that the confederacy ought to be fully strengthened. It was felt by the people that the only solution lay in drafting a wholly new constitution, with adequate and effective safeguards for minorities. It was under these circumstances that the modern Swiss constitution was framed in 1848.

There was no special body elected and constituted as a constituent assembly as in America or the Dominions or France for drafting the new constitution. The federalists did not convoke a national convention for the purpose. The existing Diet of the confederacy appointed its own committee to draft the new constitution. The committee was to prepare a scheme under which the confederacy was to be transformed into a real Federal State. This committee drafted a constitution modelled on the lines of the constitution of the United States of America. The draft was submitted to the cantons for approval. Many amendments were suggested. The Diet prepared a final draft and submitted it for final ratification by the cantons. A clear majority of the cantons with an over-whelming majority of the people voted for it. The new constitution came into force in 1848. The constitution, although not framed by a special body solely called for that purpose, in the strict theory of constituent assembly, was, however, drawn up by the Diet which was fully representative of the people and this constitution was fully approved by the people to whom it was specially submitted for ratification. After 1848, there was a strong movement for strengthening the centre in the light of experience and this was accomplished in 1874 by a revision of the constitution and this remains the fundamental constitution of Switzerland. This constitution is a longer and fuller document than that of the United States of America. The Swiss constitution is a Federal Republic of cantons. Residuary powers vest in the cantons. The Federal has only such powers as are granted to it as in the case of the United States of America. The distribution of powers between

the Centre and the Units is on the model of the United States of America, exclusive and concurrent powers. The Federal laws are carried out not by Federal Officials as in U.S.A. but by the cantons.

There is no Bill of Rights or Declaration of Rights of Citizens in the constitution as in the United States of America or Ireland or France but freedom of belief and the free exercise of worship are specially guaranteed in every canton, the result of the age long antagonism of Catholics and Protestants.

The Federal structure consists of the National Assembly, a bicameral Legislature, *viz.*, Council of State and the National Council. The Lower House, *i.e.*, the National Council is elected on proportional representation based on manhood suffrage. The Council of State corresponds to the Senate in U.S. of America and Australia. Elections are not keenly contested and pass off quietly. According to Munroe, "The Swiss are politically the least volatile of all people having democratic government." According to James Bryce "The Swiss national Legislature is the most businesslike legislative body in the world doing its work quietly and thinking of little else." There are few debates, no set speeches, rhetoric is conspicuous by its absence, and the usual demagogic gestures are unknown. Eminent writers have extolled the Swiss Parliament as an ideal one. The Swiss take a middle class business view of questions and are not accustomed to indulge in set phrases or slogans or abstract first principles. The Legislatures are representative of all interests and professions. There is a large percentage of lawyers, although their number is not so great as in the United States of America. The Swiss Legislatures do their work directly and do not set any store by the committee system as in France or elsewhere.

One of the special features of the Swiss constitution is the Federal executive, the Bundsrath. It is a council of seven and it elects its President who is the first citizen of the nation. The members of this council act together but they are permitted to air their individual views even if conflicting with others, which is a peculiar but undesirable characteristic of the system. James Bryce urges other free nations to study the utility of this Swiss Federal executive, in which power is vested in a council chosen for a short term and not a part of the Legislature, instead of in a single President as in the United States of America or a cabinet as in England, France, Belgium or the Dominions. This system ensures continuity of policy and stability.

The judiciary is of less importance in Switzerland than in the United States of America or Australia. There is a Federal Court with elected judges. The Federal Court can nullify a cantonal law but it cannot declare a Federal law unconstitutional. The Swiss constitution expressly declares that the Court shall enforce all laws enacted by the Federal Parliament. There is a special administrative jurisdiction vested in the Federal Assembly to deal with officials for official acts, as in France but unlike in England or America.

Another noteworthy feature of the Swiss constitution is the method of referendum and the initiative. Referendum is provided for the revision of constitution. It means changes are to be approved by a majority of people and a majority of cantons. As regards ordinary laws, referendum is resorted to when demanded. Initiative is the right of a prescribed number of people to demand a change in the constitution or to enact a law. The adoption of these methods rests on the theory of the sovereignty of the people. These constitute direct legislation by the people.

The cantons are about 22 in number. They are Sovereign so far as their sovereignty is not limited by the Federal constitution and as such they exercise all the rights not delegated to the Federal Government. There are a few primary cantons, so small in size that the Government is carried on by all adult citizens in meetings in open air, as simply as the old Folkmoot or the Greek City State. "These are the oldest, simplest and purest form of democracy which the world knows", as observed by Bryce. In these "the people are conservative, they are agricultural and pastoral; no one is rich; no one is poor; all are socially equal".

The communes or villages form the backbone of the Swiss people. A high degree of Local Self-Government of a practical type has been developed in these from early times. Local Self-Government has been a factor of great importance in Switzerland. These not only constitute the foundations of the Swiss State but are also the training ground in citizenship and the art of Government. It has been the chief cause of their success in working out democratic institutions.

The amendment of the Swiss constitution is effected by the two Houses, first concurring on the revision and then submitting it to the people by means of the referendum. The Swiss constitution thus provides a special machinery for amendment to the constitution. The distinction between the constituent act and the ordinary law is maintained. In the Swiss constitution, there is a total absence of titles, marks of distinction, decorations, medals and ribbons, etc. The tone of public life is high; methods of transacting public business are simple and less ceremonious or pompous. Another feature is the importance attached to teaching of civic duty in schools. The creation of a race of small peasant land-owning class attached to the soil is said to be the best foundation of all that is best in the political life of the Swiss democracy. There are no strong parties or factions in Switzerland. No vital issues such as monarchy versus democracy as in France, slavery or anti-slavery as in America, Capital versus labour, nobility versus peasantry or any class hatreds or oppressions, exist dividing the people. Above all the Swiss people put patriotism, the interests of the nation in the forefront, pushing aside domestic differences.

The Swiss constitution is said to be a humdrum one. No sensational events attract the outside world. The Swiss people have quietly and in a practical spirit realised the main aims of Government, viz., the comfort and well being of the individual, the satisfaction of his desire for intellectual pleasures, the maintenance of peace and kindly relations between all social classes. It is not so much the constituent body which produced the constitution as the constitution itself which has been worked by the people of Switzerland, that really attracts the attention of the outside world.



## POLAND.

The Polish nation was one of those who were liberated from foreign yoke and attained independence after the first world war in Europe. The Poles are a highly cultured, civilised, and ancient people with their own language, literature, institutions and traditions, having a distinct individual national consciousness throughout the ages. Twice the Nobel prize was won by her sons in the twentieth century for literary achievement. But unfortunately the Geographical situation of Poland exposed her to foreign invaders and while her frontiers constituted a perennial source of friction with neighbours, the existence of national minorities within her borders was also a disturbing factor.

Poland lost her freedom towards the end of the eighteenth century and was partitioned among three conquerors, Germany, Russia and Austria. It was a period of complete slavery and subjection to three despotic governments, with all that slavery and subjection meant. Of the three regimes, the Austrian yoke was politically less rigorous, as the Poles had some effective representation in the Austrian Diet but under German and Russian zones, while the economic position was better, political liberty and national institutions were completely crushed. In the nineteenth century Poland became a forgotten country. In spite of dismemberment, the Poles retained their national spirit. Attempts to Germanise and Russianise them failed. Poland was poorly represented in the Russian Diet and in the German Reichstag. In 1914 when the first World War broke out and the order for mobilisation went forth, Poland was faced with the most humiliating tragedy of Poles fighting against Poles in their own land.

During the latter part of the nineteenth century, there was a new awakening among the Poles and a movement for liberty was set afoot everywhere. The political parties were divided into activists, who believed in revolution and force and the pacifists who advocated peaceful and gradual methods of attaining self-government and independence. The activists were led by Marshal Pilsudski who subsequently became one of the most celebrated figures of Europe. The pacifists were led by Demowski who fought in the Russian Diet for the rights of his countrymen. Pilsudski was exiled to Siberia but on his release in 1892, he determined to organise the revolt against foreign rule and launched a vigorous revolutionary campaign at home and abroad. His revolutionary exploits thrilled the whole country and he became the hero of the nation. In 1910, he started a military organisation to fight for liberty and established a union of Riflemen's clubs. Organisations were set up in Paris, London

and in America to help the revolutionary forces. All this was met by ruthless repression. Even the moderates were arrested and deported. World interest in Poland was roused. In such circumstances, the first World War broke out in 1914. The Germans arrested Marshal Pilsudski and imprisoned him. Events in Russia moved fast. The Bolshevik Revolution of 1917 changed the whole aspect on the Russian front and Russia was practically eliminated from the picture. With the collapse of Germany and Austria, Marshal Pilsudski was released after the German revolution in 1918 and he came back to his country and took the leadership of the nation. The sudden turn of events found Poland in complete freedom and liberty from foreign rule and the whole nation was filled with unexpected joy and enthusiasm. The allies declared for a full and independent Polish State and Poland became a free State on the very Armistice day. The Polish independent republic was proclaimed by the Regency Council which seized the power in 1918. Marshal Pilsudski who returned formed the first government and his first task was to create a new Polish army to fight for her lost territories.

## CONSTITUENT SEYM.

General elections for a Constituent Sejm were held, although there remained other territories to be brought in. It was a democratically elected assembly, starting with 305 members in 1919, it reached by 1922 to 395 deputies on the whole. A formal sitting was held on February 10, 1919, and Pilsudski opened the proceedings and summed up the political situation. By 1922 by which time Poland's territories were consolidated, the Sejm became fully representative of the new Poland. The second session was held on February 14, 1919, in which the speaker was elected. There were many groups and parties in the Sejm and these fell mainly into the right, left and centre parties as understood in politics. The Sejm declared itself a Sovereign body and passed what was known as the 'Little Constitution'. Marshal Pilsudski was made Chief of State and formed the Government in February, 1919. The Sejm had to tide over the food crisis, for which it sought American help. Poland had to struggle for her frontiers. The Paris Peace Conference had to settle the frontier disputes. Poland had to conclude a treaty with the Allies known as the Polish Minority Treaty, which provided for the minorities, equality in civil and political rights, the right to use their own language, for all racial, linguistic and religious minorities. Life, liberty and the free exercise of religion were declared. Jews who formed a considerable number agitated for their rights at the peace conference. The Sejm ratified the peace treaty in July 1919 by a majority. Demowski signed the minority treaty for the Government. The Poles protested against this treaty, on the ground that the Polish minorities in other lands were not given similar protection.

Meanwhile war with Russia broke out over the eastern frontiers. After reverses in the earlier stages, finally Marshal Pilsudski inflicted

a crushing defeat on the Soviet armies in the historic battle of Warsaw, which was hailed in Europe as the stopping of communism and as such the greatest event of the time. Poland concluded the Riga treaty with Russia.

The Sejm that was called in 1919, was called to frame a permanent constitution for Poland. But as stated above, owing to internal disagreement and divisions, and on account of the pre-occupation of the country with the acquisition of territories and the war with Russia, the task could not be accomplished. The Sejm had appointed a constitutional commission in 1919. This commission put its draft before the Sejm in July 1920. Debates opened on this draft on September 25, 1920, but progress was very slow, due to party strife inside and outside, although the Sejm and the Government showed deep anxiety, to expedite the establishment of the new constitution. Controversies centred over the creation of a second chamber, the Senate and the powers and functions of the President. Leftists headed by Pilsudski were against a bicameral Legislature while the right party wanted it. The articles regarding the Senate, were remitted back to the constitutional commission for reconsideration and a redrafted constitution was also sent to the Sejm. This process went on till 1921 and time was gained.

Finally on March 17, 1921, the Sejm passed the constitution enbloc by an overwhelming majority. As a compromise the bicameral system was adopted which was a victory for the Right. It was really a move to check the powers of Pilsudski. But the Senate was only an honorific body without initiative and powers. The Sejm, the lower house was supreme and omnipotent. It really counted. The franchise was universal, direct, secret, equal and proportional. The Sejm and the Senate constituted the Legislature. The president, and a cabinet of ministers responsible to the Sejm formed the executive. The legislative body was made strong at the expense of the executive. The Courts of Justice are declared independent but they had no power of review vested in them as in the United States of America. The Courts are bound to accept the Sejm's laws. In the procedure and constitution of the Senate and the office of President, French ideas were copied. In the provision for an elaborate declaration of rights and duties of citizens, the German ideology was followed. Even the latest Czech constitution had its influence on the Sejm. The British model was followed in the principle of cabinet system. The Polish State is declared to be a republic. The President of the Sejm is elected at a joint sessions of both houses in a National Assembly. Poland is a Unitary State. It is said that its constitution is one of an ultra-parliamentary type. Its weakness lay in the existence of numerous parties. The Polish constitution combines Polish elements with Western Parliamentary features. The preamble of the constitution sums up in a nut-shell the Polish case, its past and future and is worth perusal for the nobility of its ideals. The Polish constitution recognises ownership of private

property, although the State has ample powers to control and regulate the ownership of all property for the benefit of the masses as occasion arises. It has not followed the Soviet pattern, although socialistic tendencies are clearly traceable.

Constitutional amendment is provided for once in twenty-five years, both houses sitting as a National Assembly, as in France. Ordinarily amendment takes place after one-half of the total number of both houses sitting together as a National Assembly moves and is then carried by a majority of two-thirds. Thus the constituent character of the assembly is distinctly maintained.

The second Sejm met in 1922 and its chief task was economic and financial reconstruction. It had to shape its foreign policy. It had to deal with questions like Memel and Danzig, under the directions of the League of Nations. Here it may be mentioned that the port of Danzig was given a special constituent assembly under the treaty of Versailles. Its constituent assembly adopted a constitution for the city and port and submitted it to the League of Nations, which returned it for modification. There was much controversy over this. Ultimately it was placed under a Harbour Board.

In July 1926, the constitution was amended by the Sejm converting itself into a National Assembly and introduced several reforms. The powers of the Sejm were limited. A new constitution was promulgated, under which a strong executive was established. The President was given full powers which was necessitated by the experience of the past. All this was brought about on the initiative of the President to suit the needs of the situation. Still the executive was responsible to the Sejm. Constitutional struggles often occurred between the Sejm and the President. The Pilsudski regime established a strong and renovated Poland. Marshal Pilsudski was the creator and father of the Polish Republic. From 1930 onwards the Sejm became weak and subservient to the executive. The opposition became feeble. On the death of Pilsudski, his friends including Colonel Beck succeeded in capturing power. The Sejm's size and power were reduced. In 1935 a new constitution was organized, under which the electoral law was made narrow, with a view to exclude the rank and file, a measure which was opposed to the principles of universal, equal and direct franchise. Totalitarian tendencies were developing in the Government.

One of the sources of perennial trouble for the new State was the existence of national minorities. The Germans, white Russians and Ukrainians, the Czechs, and Lithuanians looked to their respective foreign national States for help. Germany, Russia and Czechoslovakia exploited the situation against Poland and were ready to injure Poland by any weapon. Especially Germany and Russia were too ready to make charges, which the Poles had to vigorously explain and repel. It was said that as the Polish minority



question was often taken to the League of Nations, Poland was the best client of the League but this was not her fault, if others forced her problems to be raised too often there. The minority problems of Poland and of Czechoslovakia have their lessons for others. The appeasement of intransigent minorities is a dangerous move. The fate of these two countries at the hands of Hitler's Germany clearly proves the danger of exaggerating the importance of minority problem; minorities can only demand adequate safeguards but if all sorts of charges are trotted out not in a *bona fide* manner but as a pretext for stifling the majority of the population and render them unhappy by wrecking the State itself in intrigue with foreigners, then a supreme importance of holding the reins arises. The minorities must be made to realise that they cannot play with loyalty to the State and endanger its security by looking to extra-territorial help. It is happy to note that Poland and Czechoslovakia which passed once again through the greatest ordeal of history have survived the onslaught of Fascists who in the name of minorities laid sacrilegious hands on the integrity, honour and life of these States. Poland is to-day a member of the United Nations Organisation and is engaged in the task of national constitution reconstruction in a changed Europe.

## CZECHOSLOVAKIA.

Czechoslovakia, like Poland and Yugoslavia was established out of the disintegration of the Empires during the first world war. It is a union of all the Slav race, speaking the slav language. Bohemia is the central State of the old Czechs. Bohemia was one of the influential and powerful kingdoms of the past, subjected to monarchical rule for ages. In the eighteenth and nineteenth centuries there was great industrial development in the Czech territories which induced a large German population to enter in.

Bohemia and the adjacent Czech lands were under the rule of the Austrian Hapsburg Empire, while Slovakia fell under Hungarian rule. The Czechs fought for their rights and liberties in the Imperial Diet of Vienna but all in vain. They agitated for the conversion of the Austrian Empire into a federation of autonomous States but failed. The position of Slovakia under Hungary was still worse. Throughout history and until the creation of the new independent Czech State, the Slovaks threw their lot with the Czechs and co-operated in achieving independence. In the twentieth century the young Czech party was founded and it captured the seats in the Imperial Diet. The movement for liberty was led by T.G. Masaryk, who along with Dr. Benes and Kramar may be said to be the fathers and creators of the young Czech Republic. The party represented the masses unlike previous political parties.

At the same time there was a great renaissance and a wave of nationalism amongst the Czechs. The Czechs are a very industrious and active people which led to great industrial and agricultural progress. There was a literary and poetic outburst and the development of fine arts like sculpture, painting and music. World famous sculptors arose. There was a great movement of education and the celebrated University of Prague was founded. The Czechs fully utilised their local self-governing institutions and the opportunities of administration they had under Austria and became thoroughly fitted to the new freedom.

When the World War broke out in 1914, Dr. Benes and Masaryk fought at home and abroad for the creation of the new State, which for so long it was felt impossible to realise. Within Bohemia a reign of terror was ushered by Austria to suppress every trace of nationalism but in vain. It only acted as a tonic and an impetus to the cause of liberty. The Czechs proclaimed to the whole world their determination to be free. An independent Czech army organised on a voluntary basis by the national party fought against the central powers on the Russian front, which lifted the Czech people in the estimation of the whole world. On April 13, 1918, representatives

met and took a vow of independence under the leadership of Dr. Kramar who was given amnesty after having been condemned to death by the Austrians. A provisional government was established and Dr. Benes who was then at Geneva became the foreign minister. President Wilson proclaimed his approval of this move on the principle of self-determination and on the historic rights of the Czecks, which completely silenced and disarmed Austrian opposition. The Czecks thus achieved freedom by struggle abroad and at home. The new Czech State had to consolidate its territories, the peace conference had to settle its frontiers, and there was no time for the holding of a general election for a constituent assembly.

In November, 1918, the National Assembly representing Czecks and Slovaks met and declared the Czech Republic at its first session. It deprived the rights of Austria and Hungary and elected Masaryk as its president. It appointed the first cabinet, with Dr. Kramar as prime-minister and Dr. Benes as foreign minister. The Paris conference recognised the new State and defined its frontiers based on ethnological and historical reasons. All Slavs were united together. The German minorities formed two independent States in Bohemia called "Dewshohohewen" and "Sudetenland" and declared themselves autonomous units under Austria. Geographically this was an impossible position, as Czech territories intervened between them and Austria. The Czecks put down the separatist movement and incorporated them to the new Republic. This gained international recognition. Territorial adjustments had to be made with Poland also. Hungary made an attempt to seize Slovakia by invading her territory but the Allies intervened and stopped this.

The National Assembly from the outset calmly and with exemplary energy devoted itself to the solution of the many intricate problems facing it. The first meeting of the National Assembly expressed the nation's faith in overcoming difficulties. It accepted the principles of American Declaration of Independence, the principles of Abraham Lincoln, President Wilson's ideas, and the French Declaration of the Rights of Man and Citizen. It declared its objectives. On 29th February, 1920, it adopted the new constitution. The National Assembly was a democratic and representative body. Seats were allotted to political parties on the basis of votes polled for the last Austrian Reichsrath, which was on universal suffrage. When Slovakia adhered, fifty-five members were co-opted and when the final boundaries were settled, additional members were added. The Germans and Magyars abstained. Although the National Assembly was not specially called by an election, it has been accepted generally that it was fully representative of all the currents of opinion in the country. The Assembly carried out a series of reforms.

Political power was vested in a bicameral Legislature, elected on universal, equal, and direct suffrage and proportional repre-

sentation. A President with a cabinet constituted the executive. The office of the President is in some respects modelled on the United States of America and is invested with vast powers. The new constitution in its very first clause proclaimed "The people is the sole source of all power in the Czechoslovakia Republic." The Czecks pledged the widest autonomy to the minorities compatible with the security of the State.

Czechoslovakia passed through the greatest and the most fiery ordeal of destruction and massacre in the second World War and has emerged once again independent, and is a member of the United Nations Organisation. The course of events which took place during the war, and the latest constitutional developments in the Balkan States cannot be fully and adequately dealt with at present, as they are current matters and we must await the passage of time for a clear knowledge of the same.

But the modern world knows this much of the recent past. Nazi Germany found a new Trojan horse in the Sudeten German party which was intransigent and which levelled all sorts of charges against the Czech State. The world knows what Hitler said in Godesberg: "Two men confront each other, there is Benes and here am I. We do not want any Czecks. Our demand for the Sudetens is irrevocable. Benes has it in his hands to choose either peace or war. He will accept my demands or we shall go and liberate our Germans." Hitler told Chamberlain that the grant of Sudetenland was the end of German territorial claims but Chamberlain was soon disillusioned. The world knows how the process of liquidation of the Czech State openly went on and how he went to Czechoslovakia, smashed the State by air and land, and inaugurated a totalitarian puppet regime and a reign of terror during the war. But Czechoslovakia has again been freed and restored to itself. The process of national reconstruction and the re-establishment of her constitution is taking place under new conditions and in an altered Europe.



## YUGOSLAVIA.

Yugoslavia is one of those States which framed a new constitution in the post-war Europe after 1918. It was inaugurated at the instance of President Wilson. It is the pivot of the Balkan States and plays an important part in the balancing forces of European politics. It is slightly larger than Great Britain, and is rich in minerals and agriculture. This new State was formed by combining the old Kingdom of Serbs, Croats, and Slovenes. The Serbs were for a long time under the Turkish yoke; the Croats were under the Hungarian domination, and the Slovenians constituted part of the Austrian system. Out of the disintegration of these Empires after the World War of 1914-1918, these were united together and constituted into a fresh nationality. It was under these circumstances that these groups of people were called upon to evolve a common constitution for their new State. It was not as if the situation was the outcome of a war of liberation as in the case of the United States of America, or any patriotic national ferment. In fact, except a common language there was no other cementing force and there were divergent elements in the State. It consisted of Christians who were themselves divided, and Muslims who looked to the Moslem world for inspiration. The Roman Catholics and the Greek Orthodox Church were opposed to one another. There was sharp antagonism between the Serbs and Croats. A union of these diverse elements was considered a dream and a chimera. The problem of the minorities was one of the vexed questions which the new Government had to face. There were Germans, Magyars, Albanians, Turks, Italians, Rumanians, Bulgars, Greeks and others in the make-up of the population. The German minority was the most persistent and powerful one.

After the fall of the Empires, local assemblies were established throughout these regions constituting Yugoslavia and various parties seized power. In November, 1918, a General Convention known as the National Majority was called at Zagreb. The delegates were not elected by popular vote in a formal manner but were chosen by the political parties which were powerful in the local assemblies. This body appointed a representative committee of twenty-eight delegates and gave it full powers to arrange for the election of a representative constitutional convention within six months of the treaty, after the first World War, and such an elected body was to determine by a two-thirds vote the constitutional structure of the new State. Till then all legislative powers were to vest in a Provisional Parliament and executive power was to be exercised by the Crown Prince of Serbia till the completion of the task by the constituent assembly.

The Crown Prince proclaimed the new United Kingdom of Yugoslavia. After much struggle, the provisional parliament finally passed a law on 3rd September, 1920, calling for a constituent assembly. Elections were held in November, 1920 and the total number of seats were fixed at 419. This election for a constituent assembly in which more than sixty-five per cent. of the voters took part and in which all the parties were fully represented was universally hailed as a fair election. Parties were formed mainly on political and economic issues except in the case of Yugoslav Moslems. There were democrats, radicals, communists, socialists and landholders. The separatists who opposed a common constitution were in a minority. An overwhelming majority of voters were for union and against sectional independence. Two hundred and ninety delegates stood for union as against one hundred and one delegates of separatist views from the Croatian peasant party, Slovenian populists and Yugoslav Moslems.

The Constituent Assembly met on 12th December, 1920. It elected a temporary president and later a permanent one. At this stage, some time was taken up in hearing the petitions and complaints about police interference in elections. The Provisional Government entered into negotiations and compromises regarding its draft constitution and eventually submitted its plan on 25th January, 1921. The convention appointed a constitutional committee of forty-two members elected on a proportional basis and it was to deal with all the drafts. It had to consider the Government's plan, its own draft and the drafts submitted by individual delegates backed up by twenty at least. The rule of a two-thirds majority laid down at Zagreb was cancelled and rule by a simple majority was substituted for the convention procedure. The convention stood adjourned from the first of February to April 22. It then discussed the various plans and on 12th May, the Government plan was adopted by 227 to 93, the remainder of the delegates having abstained from the proceedings. After this, the Government project was taken up and discussed section by section.

There was a long and prolix debate on the constitution and all members were given the fullest opportunity to present their views. These debates presented a contrast to the discussions held in the Philadelphia Convention of America 1787 and displayed no great erudition or firm grasp of the principles of federalism or of comparative politics. There were no doubt occasional references to the constitutions of the United States, Switzerland and Germany but they were of a vague and general character. Among the delegates, the Serbs who had enjoyed a measure of parliamentary form of government under the Turks, had some experience of politics and administration but the same cannot be said of the rest. There was no great movement of political education nor a keen interest in the study of the ancient and modern constitutions as evidenced in America after the Declaration of Independence. No great

revolutionary ideas or ideals captivated men's minds as in the case of the French Revolution, nor was there an economic upheaval on the model of Soviet Russia. The people set themselves to the task of reconciling their interests in the face of the new situation confronting them after their liberation from age long foreign yoke by the turn of events in a world war.

Among the important plans circulated in the convention were (1) Mr. Stogen Protitch's project which was on the British Model, the author being an admirer of the British constitution. (2) The Croatian plan which proposed a sort of confederation of independent provinces, somewhat on the lines of the Articles of Confederation of the United States, before 1787. This embodied the federalist principle. An interesting proposal contained in this scheme was the establishment of a constitutional court to decide constitutional questions between Provinces and the Centre. (3) The Slovenian plan stood for "federalism in politics and state socialism in economics". (4) A fourth plan was that of Dr. Smodlaka, advocating a strong federal centre. All these showed the difficulties experienced by the Yugoslav convention in coming to an agreement on any kind of federation. The place to be assigned to the Crown was a thorny question. The Republicans feared that the existence of monarchy would lead to dictatorship and military regime. The Serbians who had parliamentary traditions stood for a single chamber parliament and not for a bicameral system. Even as regards the judiciary there was no agreement among the parties. If these drifts were allowed to continue no constitution could have been drafted. A clear majority was not available for any scheme. In this state of affairs the moving spirit of the convention Pashitch who believed in the creation of a strong centralised State as the only solution for the domestic and foreign situation entered into negotiations and talks and finally was able to win over the Moslem delegates to his side, with the result that a requisite majority was obtained for the Government plan. One of the points raised in this connection was the question of unity or independence. The people of the several sections had no opportunity to vote before the fact was accomplished. The constitution had to be rushed through by negotiation and pressure. The Serbs dominated in the making of the constitution and the framework is said to resemble their old Serbian constitution, applied to an extended territory. Monarchy, single chamber, parliamentary system and local self-Government are said to be Serbian in character although the details varied. The constitution has some resemblance to the German Weimar constitution. It has long sections on social reform and reflects a socialistic spirit.

The constitution is described thus "the Government of the Kingdom of the Serbs, Croats, and Slovenes is a constitutional parliamentary and hereditary monarchy." Legislative power is vested in "the King and the National Assembly together." The Legislature consists of a single chamber Parliament. The convention

could not agree on an upper chamber. The elective basis is generally proportional representation with a device called 'electoral quotient' for securing the representation of minorities. Sectionalism is a persistent factor in Yugoslav politics. Every member of the National Assembly is sworn to support the constitution. Each represents the whole State, not only those who elected him. Journalists and lawyers constitute important groups in the Yugoslav Legislatures.

Executive power is vested in a cabinet responsible to the King and the National Assembly. The Crown in Yugoslavia is not like the Crown of England. The Crown has more powers and there are opportunities for the Crown to step in and exercise authority. Although there is full scope for the exercise of Royal power, it is said that the Crown is always circumspect and acts in association with Parliamentary leaders. The position led to deadlocks and Royal supremacy in the constitution as subsequent events showed.

There is no power of review vested in the courts to declare laws unconstitutional as in the case of the United States of America. The courts cannot interpret the constitution.

The Communist party began to organise itself in 1920, but the Provisional Government by decree dissolved the communist organisations and muzzled their press. A small revolution broke out, in which the author of this decree was killed but the parliament enacted measures imposing capital punishment for terroristic acts and the movement subsided. Isolated movements always persisted.

The question of the treatment of the minorities has been a complicated one in Yugoslav affairs and has its ramifications of a widespread nature. The German minority demanded total autonomy, separate schools, their own language and their own system on the principle of self-determination. The League of Nations provided for a guarantee of proper treatment of minorities on the part of Yugoslav State, which resulted as an infringement on its sovereignty. It required all the tact and peaceful disposition on the part of this State to keep in check these obstinate and intriguing minorities. The German minority looked to Germany to back them which added to the complexity and delicacy of this problem. It taxed all the diplomatic skill of the young Yugoslav State.

One of the important constitutional controversies related to the nature and powers of the Constituent Assembly of Yugoslavia which framed its constitution, was it a sovereign body as every such assembly in the fullest sense ought to be. There were several factors which limited its sovereignty. In the first place, though the Assembly spoke the language of sovereignty it had its own commitments which hampered it. The idea of monarchy obsessed it. The members of the convention had to take the oath to the King. Monarchy stood outside the convention as an independent entity having some popular support. Secondly the name 'Kingdom'



shows the monarchical conception as an inevitable factor to be reckoned with. Thirdly even the law which provided for the calling of the convention contained a clause that the King might dismiss the assembly and carry on its work by decrees.

Yugoslavia was one of the victims of the last World War and was thrown into confusion and destruction at the hands of invaders. She has emerged intact out of the war, although vast changes are likely to take place as a result of the war.

## TURKEY.

Turkey is another country in which a new modern constitution was established on western lines in post-war Europe, after throwing away the old regime. It was Mustapha Kemal, the Atta Turk (Father of Turks) that brought about the revolution and was responsible for the New Republic. Out of the disintegration and remnants of the old Ottoman Empire, the modern Turkish State was created.

In 1908, the Young Turk party attempted to create a revolution and to put the Ottoman State on a Parliamentary basis but this did not make any headway. The old order was strongly entrenched and western ideas made slow progress. In the European war of 1914-1918 Turkey sided with the central powers headed by Germany as against the Allies. A mighty effort was made to enlist the sympathy of the entire Islamic world and to revive Pan-Islamic dreams, in order to prop up the Ottoman regime. A Fetwa was obtained from the Chief religious jurisconsult of the Empire, to mobilise the whole Islamic world, to the effect that hostilities against the three infidel powers, Great Britain, France and Russia, would be a Tihad or Holy war, even though waged in alliance with infidel Germany, Austria and Hungary. Most of the subjects who were Muslims were within the territories of the Allies and very few under the central powers. There could be no response to this call for a crusade from Muslims in India, in Russia, in China, or from Egyptians, Persians, or Afghans, with the result that Turkey was defeated in the War and surrendered to the Allies in 1918. An attempt was also made to establish Pan-Turanianism, *i.e.*, to unite all Turkish speaking people under one State. The Arabs led by the Amir of Mecca rose against this movement. The Arab Provinces became separated and independent. Egypt became independent and the old Empire broke up to pieces. The grandiose dreams of Pan-Islamism and Pan-Turanianism melted away, before the new political and economic forces and as a result of the chaos following the war, each country began to look to her own salvation. Turkey also began to get recognition of her sovereignty and independence over the territories left and turned to the task of constructing a new State. Her immediate objective was to consolidate her territorial unity and integrity.

## THE TURKISH REVOLUTION.

It was at this time that Mustapha Kemal who had distinguished himself in the war, and who was then in charge of Asia Minor, forwarded the new national movement. Mustapha Kemal adopted

a robust common sense policy and abandoned visions of Holy wars and Pan-Islamism. With the vision of a prophet and creator, he seized the opportunity and started the national movement with Angora as centre. The national movement received a great impetus from the Greeco-Turkish War of 1919-1922. The Greek Christian minority in Smyrna raised the cry of oppression of minorities. The allied powers being stampeded into believing this cry, despatched Greek troops to Smyrna in 1919, which resulted in a reign of terror there. This roused the intelligentsia and the entire Turkish people to resist fiercely the invaders. This Greek occupation of Smyrna was later on condemned as unjustified by the report of an inter-allied commission which found that the charges of the Greek minority were unfounded. Whatever that be, the Smyrna invasion brought the nationalist party to the forefront and it was the immediate cause of the birth of the new nationalist and patriotic spirit. It was now that Mustapha Kemal came forward and after several campaigns, the foreigners were utterly defeated and the Greek troops retreated finally.

The new national party headed by Mustapha Kemal proclaimed the Turkish National pact from Angora, which became the Magna Charta and the Bill of Rights for the Turkish State. While the national party was functioning at Angora, the defeated Sultan with his old Parliament was nominally carrying on at Constantinople, with Allied support. The Chamber of deputies functioning at Angora moved to Constantinople but General Milner invaded the city on March 5, 1920, arrested the notables and deported the leaders to Malta. While this repression gave a temporary set back, to the nationalist movement, it roused and enlisted the feeling of the people on their side. The deputies who escaped from Constantinople went to Angora again and reformed a new Parliament. There was the old Parliament at Constantinople under Allied control. The new Parliament of Angora styling itself henceforward as the Grand National Assembly of Turkey reiterated the National pact. The National pact declared the end of the Sultanate of Constantinople and the Ottoman regime, as they were tools under western enemies. The Assembly declared that the Caliph Sultanate had violated Turkish Sovereignty, took over the Government and declared the Fetwas and laws of Caliph and Sultan as a nullity. It declared the sovereignty and freedom of the Turkish State. It also declared "The Christian Ottoman element together with the foreign elements settled in Turkey, remain under the safeguard of the nation; yet they are forbidden to undertake anything against the general security of the country." This Grand National Assembly representing many parts of the country was the first Constituent Assembly of Turkey to proclaim a new constitution. It appointed an effective government with Mustapha Kemal as President and Commander of the forces. Many of his lieutenants who were strong and capable men were in captivity at Malta.

On January 20, 1921, the new fundamental law was declared. Henceforth sovereignty belonged to the people and it no longer lay with a single monarchical individual. The instrument of popular sovereignty was to be a single chamber of deputies elected by manhood suffrage for a term of two years. The functions of the former Sultan, the Senate and the Chamber of Deputies were all to be exercised by the new unicameral assembly at Angora. The New Assembly became sovereign in all respects and all legislative, executive and judicial powers, foreign affairs and defence vested in it. There was a President and also a Vice-President chosen from the Chamber of Deputies.

#### HOSTILE FORCES.

The New National Assembly faced many hostile forces. In the first place, the Royalists allied and entered into secret intrigues with foreigners to create trouble. Secondly racial and religious minorities such as the Greeks in Smyrna who were sent out later, raised the cry of oppression of minorities. Thirdly the young Turkish party which became discredited plotted against the new order. Fourthly the conflict between the puppet regime of Constantinople and Angora continued. And lastly the Greeco-Turkish war over Smyrna was raging and had to be brought to a successful end. No constituent assembly ever faced such formidable, unscrupulous and violent elements as this and it should be said to the credit and glory of the Atta Turk that he rose to the occasion and solved every one of them in a victorious fashion.

On July 17, 1921, the Greek Government instructed the Greek High Commissioner in Smyrna to establish and constitute Smyrna as an independent Christian State of 'Ionia' thereby partitioning Turkey. This proposal for partition led to the redoubling of the efforts of the national party to resist the Greeks fiercely. The Unity and integrity of Turkish State went forth as a rallying cry. The Turks triumphed in this War and raised the Turkish valour and prestige in the estimation of the whole world. The allies forsook the Greeks whose rout was complete. In the treaty of Lausanne, the frontiers of Turkey were defined, and provision was made for protection of minorities and exchange of populations. The Angora National Assembly became the recognised provisional regime. One of the many steps which Mustapha Kemal took to consolidate and unify the new Turkish State was the adoption of a radical solution regarding the Greek minority in Smyrna, which often exposed Turkey to foreign machinations. Recognising that the Turks and Christians could not live amicably side by side, the device of exchange of population was resorted to as the only solution. It was done by mutual agreement and not by force or violence. Under this scheme, the Greeks of Turkey went over to Greece and the Muslims of Greece went to Asia Minor; thus the religious and racial homogeneity of both countries was secured. A commission was appointed to go into



the details of the scheme and to carry out the same. Here it must be observed that the peculiar nature of the minority problem in Turkey lent itself to an easy solution of this type which under other circumstances and conditions would have been a more complicated one. In the first place, there was an imperative necessity for an immediate practical solution, since the Greeks and Turks by temperament and tradition could not live amicably as neighbours and carry on normal life, unlike in the case of India where Muslims and Hindus are living together amicably and peacefully as neighbours for centuries co-operating in all walks of life. Here in India, there is no separate nationality. It is sought to be based on mere religion. Mere change of religion cannot create a variation. Secondly the populations which had to be exchanged were small and compact bodies of people, concentrated in particular localities mostly and as such movement was simple and practicable. The Greeks were mostly in Smyrna and Muslims were in Macedonia. Thirdly there was no question of the minority of Turkey, claiming a right to partition the country for their benefit and creating a new Greek State out of the carved Turkish territory. In fact the Turks refused to part with an inch of their territory and fought the Greek war most fiercely for the defence of their homelands. The option given to the Greeks was to go and settle themselves in another country, where similarly there were Muslims who were persuaded to go to Turkey. The whole process involved an amount of compulsion as well, for there was an outburst of protest and indignation from both sides of the concerned population; sudden uprooting of homes and transplanting of populations was not relished by the people. However this step freed Turkey from a thorny and age long obstacle to progress and enabled her to go forward. Turkey became one homogeneous nationality with one ideal and one language. Although the new Turkish State was a reduced one, territorially, after the fall of the Ottoman Empire, she was now a strong, and united State and ceased to be the 'sickman of Europe'.

#### THE ANGORA NATIONAL ASSEMBLY.

The great National Assembly led by Mustapha Kemal adopted several drastic steps and carried out many radical, social and economic reforms for the modernisation of the new State. On November 1, 1922, the Sultanate of Constantinople was abolished, which was a momentous step in Islamic history. The new Government felt omnipotent under its gifted leader, to start vigorous measures. The Sultanate had made no constructive contribution but rested only on the theory of divine right. The immediate cause which led to this step, was the manoeuvre of the Allies to invite the defunct and unsupported Sultan to send representatives to the Lausanne Conference instead of the Angora Government. This move gave offence to the nation and a motion was carried in the National Assembly by which it was declared "it recognises no form of Government besides the Government of the Great Turkish National Assembly within the

bounds of the National Pact. Accordingly, the Turkish people consider the form of Government in Constantinople which is based on the sovereignty of an individual as being obsolete from March 16, 1920, onwards for ever". The Angora Government thus repudiated the Ottoman figure-head as the tool of the Allies and traitor to Turkey. The Sultan was ordered to be tried, but fearing, he quietly slipped away with his family to England by the backdoor. After his flight a cousin of his was elected Caliph by the Angora Assembly on November 18, 1922. At the Investiture ceremony, prayers were said for the first time in history in the Turkish language instead of Arabic, showing thereby that the New Turkish State was based on Turkish nationality rather than Muslim religion.

\*On October 29, 1923, the Turkish State was declared a Republic by the Great National Assembly. The Caliphate became a pure spiritual institution, although even this did not last. Church and State were separated. Jesus said "Render unto Cæsar the things that are Cæsar's and unto God the things that are God's". This separation of Church and State was something which the Islamic masses could not understand. The fusion of religious and political activities and organisations was a marked feature of the rise and growth of Islam since the times of the Holy Prophet. At the time when Mahomed preached his new religion, there were no strong States or Governments and there was a political vacuum unlike in Europe where the Strong Roman rule was supreme, when Christianity spread. Even in the Christian world, the secularisation of State and the separation of Papacy from politics were achieved only after centuries of struggle.

The Caliphate acted as a symbol of unity in the Islamic world. When Turkey was threatened during the first world war and subsequently, the Khilafet Movement gained greatest adherents among the Muslims of India but these suffered a total disillusionment when later on the Turkish Revolution swept the Ottoman Caliphate off the chess-board. It was under the Caliphate of Abdul Hamed between 1876 and 1908, that efforts were made to make it a powerful cementing bond among the Islamic world by means of every kind of propaganda. But the Fetwas of Caliph often went against the rising national forces. The Angora National Assembly felt that it could not keep alive this institution even as a nominal spiritual figure-head with any degree of safety to the new State. The existence of the Caliphate was associated with political prestige among the Islamic world and it was feared that this would pave the way for future danger. On March 1, 1924, the New Republic announced the abolition and expulsion of the Caliph. The Caliph left the country. The consequences of the abolition of the Caliphate were that Turkey ceased to be the centre of Islamic authority and the process of westernisation of Turkey was facilitated. The New Republic took strong measures to consolidate itself and enforced law and order.

## REFORM MOVEMENT.

The Turkish Republic carried out many radical reforms in the direction of westernisation and modernisation of the whole nation. Even during the Ottoman regime, as a result of military reverses at the hands of the Western Powers and due to the influence of contact with western armies especially during the Napoleonic wars, the Turks attempted to westernise their army but this was inadequate and it was discovered during the revolution of 1920, that such piecemeal reform would not fit in with traditions of an antiquated, social and economic order and consequently the New Republic launched upon a series of bold social innovations. Among the great reforms effected were, the abolition of the Capitulations and millet system under which foreigners in Turkey enjoyed privileges and immunities, the abolition of Sultanate, Caliphate, and privileged religious corporations. But the greatest of the new reforms was the emancipation and liberation of women from the Purdah system and their elevation and freedom to a position of equality with men in all walks of life in accordance with modern ideals. Women were unveiled, women's screen in trams, theatres and public places done away with. The harem, the eunuch system, and polygamy were abolished. Turkey tried a policy of total prohibition of alcohol for a time but it was abandoned later. Education was liberalised and placed on a modern footing and science and technology made rapid progress.

The Turkish constitution is a unitary and centralised one. Its unicameral Parliament, the Grand National Assembly is sovereign and supreme like the British Parliament. The Parliament elects its President in whom executive power is vested and he acts through a cabinet with a Prime Minister responsible to Parliament on the British Model. The cabinet is called the Council of Commissioners. There is a Supreme Court with a system of inferior Courts.

The Turkish Revolution was not preceded by any intellectual Renaissance or movement of political education among the masses. It was the work of the Intelligentsia led by a few great leaders who had imbibed western ideals and who were chiefly influenced by the ideals of the French Revolution, and French ideas in general. The Turkish Revolution was mainly a political one, although there was westernisation and radical reforms. It did not follow the Soviet pattern of socialism and abolish private property. The constitution though patterned on western parliamentary type, is in conformity with Islamic spirit, laws and culture, as Muslims constituted, the bulk of the State. In one respect Turkey resembles the Soviet in that there is only one party in the State. It is the one party State like the U. S. S. R. Thus the creation of modern Turkey was the work of the Grand National Assembly of Angora which constituted itself as the Constituent Assembly of the country, which on seizure of power after Revolution, framed a simple, concise Republican constitution for the new born State.

THE UNION OF THE SOCIALIST SOVIET REPUBLIC—  
U. S. S. R.

The system of Government which prevails in Russia is a novel one. Soviet Socialist Republic is the first non-bourgeois or non-capitalist socialistic State. It was achieved by a revolution which occurred in 1917 in the midst of the first World War. It is based on the principles of Marxism and socialism and the abolition of all prospective ownership of property.

In size and vastness of territory, Russia is thrice as big as the United States of America and in population it is only next to China and India. It is inhabited by different races like Russians, Poles, Jews, Finns, Letts, Turko-tartars and Mongols, speaking different languages and having distinct habits, customs and manners, and yet modern Russia has welded together all these diverse elements into one strong and united people. The government of U.S.S.R. is a government of the masses, of workers and peasants and therein lies the secret of its might. U.S.S.R. has emerged out of the blood and fire of the Second World War as a first rate power and is now playing an important role in the United Nations Organisation.

The Russia of the Czars until the Bolshevik Revolution of 1917, was under the regime of an undiluted despotism, in which the people were sunk in poverty and illiteracy and forms of constitutional liberties and civic rights were unknown. The democratic Revolutions of America and Europe and the French Revolution had virtually no influence upon her. The Czar hated even the words constitution and parliament and all political manifestation was ruthlessly suppressed. In the latter half of the nineteenth century the people began to assert themselves under the influence of liberal ideas and the teachings of Karl Marx which began to spread among the intelligentsia. Lenin became the prophet and priest of Marxism and socialism.

In 1905, after the defeat of Russia in the Russo-Japanese war, the first revolution occurred. It was a mere political revolution without the backing of the masses. Various political parties were formed whose main object was to end autocracy but they differed in their methods and outlook. There was a constitutional party which aimed at the introduction of Parliamentary democracy on the American and British model. In order to disarm political agitation, the Imperial Government issued a manifesto establishing a new constitution, under which the old Duma was called into existence to enable the representatives of the people to discuss public matters. Duma consisted of two houses, one an elected body



representing the people, *viz.*, the State Duma and the other the State Council representing the nobility and the aristocratic elements in general. This Duma was ineffective and continued up to the Revolution of 1917. It was during this first revolution of 1905, that the first Soviet was formed by Lenin in St. Petrograd. Soviet simply means a council. The Soviet of Petrograd consisted of about five hundred deputies chosen from the factory workers and this set the pattern for other urban Soviets or councils of workers in important centres. There was a strike movement among the labourers at this time. The newly formed Soviets were looked upon more as revolutionary bodies aimed at overthrowing capitalism and Imperialism than as alternative forms of government or bases of State structure into which they were converted later. The Petrograd Soviet was dominated by Mensheviks, *i.e.*, a moderate party led by Trotsky but Lenin condemned all such attempts as sham and wanted to establish a proletariat of the masses by a social and economic revolution. The Soviets were suppressed in 1905 and the Duma continued.

In 1917 the Russian Bolshevik Revolution broke out as a result of the reverses in the war and the utter collapse of the economic structure and life of the people. Lenin rushed and seized the opportunity and revived the Soviet of workers and soldiers of Petrograd. Thousands of Soviets of workers of peasants and of soldiers sprang up all over Russia. The Czar fell and the old regime was swept away. The Duma set up a Provisional Government led by Kerensky, which aimed at establishing a new constitution of the western type by calling a constituent assembly. This was opposed by Lenin who organised the communist party and thereafter a struggle ensued between the Provisional Government and the Bolsheviks for power. In the first All Russian Soviet Congress, the Bolsheviks found themselves in a minority, although they played a dominant part in it. The Provisional Government was not strong enough to cope with the economic problems and the crises.

The Constituent Assembly called for framing the constitution in accordance with western ideas, was ushered in and met on 18th January, 1918. It met at Petrograd. The Bolsheviks made attempts to postpone it in order to gain sufficient adherents to them. When the Assembly refused to accept the proposals of the Bolsheviks, they withdrew from the conference. At 1-30 A.M. on January 20, 1918, the Central Executive Committee of the Bolsheviks issued a decree disbanding the assembly. The Deputies were ejected from their meeting place and a Bolshevik military force refused to allow further meetings. These events made the Germans offer humiliating terms of peace to Russia in the Brest-Litovsk treaty. The Germans further instigated Ukraina to proclaim itself a separate republic on the principle of self-determination. There was a counter-revolution consequent on all this but the Bolsheviks triumphed in the end and seized all power. Lenin wanted to bring about a socialist revolution throughout the world and entrusted the propaganda

of communism to the communist party. The Bolshevik party got control of all the Soviets and proclaimed the new State. After the second congress of Soviets, "The Council of the People's Commissars" was formed with Lenin as its President and Trotsky as foreign Commissar. The new government forthwith concluded a treaty with Germany and concentrated itself on the establishment of a new order within the country. The internal and external administration of the State remained in the hands of the Soviet Government. The propaganda of Communism was entrusted to the newly organised communist Internationale which turned to world-wide activity to create a new socialistic order in the place of capitalism.

Lenin had evolved a definite theory of government and a programme of action which involved the rejection and destruction of all monarchical and democratic forms of State of the conventional western type. He turned the Soviets into organs of governmental structure. Out of a mass of Soviets, a new type of government was to be evolved, the object of which was the establishment of a socialistic State for workers and peasants, in short a government of the proletariat. Soviets are composed of deputies chosen by workers in factories and workshops. Thousands of Soviets were formed in rural areas. The aim of the new State was to transfer to and concentrate all powers in these Soviets.

The Russian Revolution was an economic and social revolution unlike the American, French and German Revolutions. In 1918, workers' councils were formed in Germany but these turned to the Weimar Constituent Assembly for framing the new constitution. The Communists failed to effect a revolution there. The French Revolution was essentially a political one. The franchise for the new national assembly after the revolution of 1789, was based on property qualification, whereas under the Soviet system, the first thing to be done was to do away with all property qualification as the basis of franchise. The Paris Commune of 1871, on which Lenin himself set great store failed to accomplish any social revolution and was suppressed.

The Second All-Russian Congress of Soviets which disbanded the constituent assembly called by the Provisional Government of Kerensky, itself assumed the functions of a constituent assembly and proclaimed the Soviet State. The "Council of the People's Commissars" played an important part in the reconstruction. In July, 1918, the first constitution was framed establishing the Russian Socialistic, Federative Soviet Republic (R.S.F.S.R.). It embodied in it a Declaration of the Rights of the labouring and exploited peoples. All central and local authority was vested in the Soviets. Under this constitution an All-Russian congress of Soviets, a cumbersome body, became the supreme organ of government. It elected a central executive committee, corresponding to Parliament. There was no separation of powers as in America. The central executive com.

mittee discharged legislative and administrative powers. Other Soviet Republics were formed and gradually they joined together. On 6th July, 1923, a new constitution of the U.S.S.R. Union of the Socialist Soviet Republic was passed. Including Ukrania and Russia there were four republics. In 1924 others joined. By 1929 the number reached eleven and in 1940 others joined. In 1925, certain changes were made in the constitution. At the instance of Joseph Stalin, a final revised constitution was submitted to the party and to the workers for discussion. The new constitution was adopted in 1936, containing the basic principles of 1918 and it remains in force to-day.

Under the new constitution, the old All-Russian congress of Soviets was abolished. All legislative power is vested in the Supreme Soviet, consisting of two Houses, with equal powers, *viz.*, the Soviet of the Union and the Soviet of nationalities. The former is elected by the citizens of U.S.S.R. according to electoral areas on the basis of one member for every 300,000 inhabitants. The latter is elected by the citizens in their respective unions and constituent republics and autonomous regions on a fixed quota of membership for each. The Secret ballot was introduced in the place of voting by show of hands which was the normal procedure at all previous elections. The franchise was made universal and even extended to foreigners who at the time of election were engaged in some work. Executive power is vested in the Council of the People's Commissars which is responsible to the Supreme Soviet. Each constituent republic has a unicameral Legislature, *i.e.*, its Supreme Soviet which elects its Presidium and appoints a council of commissars, responsible to it. There are village, town, and district Soviets at the base and the whole thing is a sort of pyramidal structure. The village Soviet is the supreme authority of the village and plays a vital part in the soviet system. It is invested with enormous powers. The part played by it in collective farming and agriculture has been immense. Co-operation is its watchword.

The electoral law in U.S.S.R. is different from that of the western democracies. The basis of representation is vocational and not geographical. In these latter countries the voters are given the right to elect a member in a ward, constituency, or district irrespective of vocation. In the Soviet system delegates are chosen by a certain class of workers, *e.g.*, miners, peasants, iron-workers, soldiers, etc., irrespective of residence. The voter votes where he works, not where he resides. The Russians claim this system to be an unmeasurably better form of representation than the world ever tried before. But this is criticised by western writers as tending to nurture a narrow class outlook instead of a broad national one. The merits and defects of the system of franchise has been a subject of controversy. The constitution provides a Declaration of the Rights and Duties of the citizen, which fully reflects in its contents the socialistic conception of the State. Amendment of the constitution is effected

by a two-thirds majority of the central Legislature which is in the nature of a special constitutional machinery for change.

The U.S.S.R. is a federation of free and independent States. The Soviet constitution cuts across the barriers of race, nation and creed and is economic in its origin, growth and perfection. The name of the State itself has no national or racial label. An all-Soviet outlook is nurtured by every means. The constitution affords the fullest opportunities and autonomy for national minorities but subject to the fundamental condition of the Soviet system of government and society. Residual powers are vested in the units and a theoretical right of secession is recognised, the exercise of which however is sternly discouraged.

A vital part of the Soviet State is the Communist party. Although the party was not officially recognised till 1936, it was the operating organisation of whole system, which influenced it from top to bottom. The constitution of 1936 gave official recognition to it and its legalisation has made it a permanent national institution. The party has been consolidating itself from time to time by a series of purges (Trotsky trials and proceedings). There is scope for only one party and it is impossible to form any other party or group. It is the one-party State. This is opposed to the democratic conception of liberty of the West. There is no "His Majesty's loyal opposition" in the State as in England, nor any groups as in France. The Communist party operates through its political bureau.

Another noteworthy feature in the development of the Soviet system is the Five year plans. There was a change in the policy of communist party in 1927, as a result of which Russia concentrated on the perfection of socialism within its own borders, instead of frittering away its energies on a world-wide movement. This inaugurated the world famous Era of Five year plans for creating an industrial and agricultural revolution. Under this regime, nationalisation of industries and collectivisation of agriculture was adopted. Scientific and technological development took place and heavy industries with foreign help were created throughout Russia.

All private ownership of property has been abolished in the State. All means of production vest in the State for the use and benefit of the masses. The whole scheme is based on "He that does not work, shall neither eat". Under the constitution a citizen can however own a house, garden, cows and pigs, etc.

As regards the judicial system, there is a Supreme Court for the Union elected by the Supreme Soviet and similar courts for the units. Judges are declared independent. The ancient practice of Russia to associate people's judges sitting in all courts is continued. At the bottom there is a large number of local courts. A humane and educative treatment of prisoners is a special feature of criminal administration. The latest announcement of the



abolition of the death penalty from the Russian Penal Code typical instance in point.

As regards religion, there is complete freedom of religious worship to-day as well as freedom for anti-religious propaganda. The Atheistic League of Russia could not make any headway against religious belief nor could it eradicate belief in God and soul from the breasts of men, with the result, it is said, there are thousands of religious and cultural societies flourishing in Russia to-day.

The Soviet State system has so far not been copied by any other State. The communist party has made great headway in China. Apart from this, there is no doubt that socialistic ideals are fast spreading everywhere, although the particular machinery of Russia is not adopted.

### THE INDIAN CONSTITUENT ASSEMBLY.

The circumstances under which a constituent assembly for India has been inaugurated are too well known to the public. The idea of a constituent assembly was hinted at by some writers in the past but it had not focussed our attention as at present. From time to time, various proposals were made suggesting the formation of constitution-making bodies, such as the Cripp's proposals, the Sapru Committee proposals, Sir Maurice Gwyer's plan of a small committee instead of a large assembly, for drafting the governmental structure for the whole of India. The idea of a constituent assembly for India was first definitely and clearly set forth in 1934 by Pandit Jawaharlal Nehru, which was a prophetic utterance. He declared "Politically and nationally, if it is granted, as it must be, that the people of India are the sole arbiters of India's fate and must therefore have full freedom to draw up their constitution, it follows that this can only be done by means of a constituent assembly elected on the widest franchise. Those who believe in Independence have no other choice. Even those who talk in terms of a nebulous Dominion Status, must agree that the decision has to be made by the Indian people. How then is the decision to be made? Not by these self-constituted bodies called All-Parties Conferences, which represent, if anybody at all, small interested groups, and leave out the vast majority of the population. Not even let us admit by the National Congress, powerful and largely representative as it is. But the ultimate political decision must lie with the people of India acting through a popularly elected constituent assembly". This idea has now been accepted and put into force.

The Indian constituent assembly was the result of what is now known as the Cabinet Mission's proposals made in May 1946. It was the immediate cause that led to the calling of this body. The ultimate causes that led to these proposals are more fundamental and deeper. India has not yet achieved her full independence. The situation created by the national forces represented chiefly by the Indian National Congress and also by other bodies, fighting for India's freedom and independence, led England to recognise the new movement for self-rule and to concede freedom to her. The last world war was followed by a new and forceful awakening on the part of the subject peoples of the World and particularly of Asia. The part played by India in the last war, and the demonstration of the military and industrial efficiency and potentialities of Indians has put them on a position of equality with the rest of the civilised world. The new international moral forces let loose by the end of the war have clearly rendered the continuance of Imperialism

and foreign rule untenable and impossible. Within India itself there has been a consensus of opinion and unity of action regarding the claim of independence, whatever might be the differences about the new form of Government. Science has knit together mankind and peace or war has become global. No one part of mankind can be kept in subjection. The establishment of the United Nations Organisation with its Charter of liberties, compels a new orientation of policy and outlook, in the direction of freedom and independence of subject races. In this background and intellectual and political climate of the age, British statesmen belonging to the Labour party, have wisely and courageously risen to the occasion in a statesmanlike manner, and recognised the natural and inherent right of India to independence. Pursuant to this high and new policy, which constituted a break from the traditional conservative Imperialistic outlook, Mr. Atlee, the Prime-Minister made a historic declaration on 15th March, 1946, to the following effect :

“ My colleagues are going to India with the intention of using their utmost endeavours to help her to attain her freedom as speedily and fully as possible. What form of government is to replace the present regime is for India to decide ; but our desire is to help her to set up forthwith the machinery for making that decision.”

“ I hope that India and her people may elect to remain within the British Commonwealth. I am certain that they will find great advantages in doing so.”

“ But if she does so elect, it must be by her own free will. The British Commonwealth and Empire is not bound together by chains of external compulsion. It is a free association of free peoples. If on the other hand, she elects for independence, in our view she has a right to do so. It will be for us to help to make that transition as smooth and easy as possible.”

The process by which this happy result is being achieved is not revolution but evolution. It is not as though India has arisen in violent revolt and rebellion and by secret or open arms has thrown off foreign forces from her soil. There was no war of independence or military and naval operations as in the case of the United States of America nor was it like the Irish struggle representing an unbroken chain of violence and anarchy. It is true there have been incidents during the course of the national struggle for liberty in India but on the whole, it must be said to the credit of India, that the unique honour of achieving freedom by dint of moral force belongs to her alone among the nations of the world. Mahatma Gandhi, the apostle of non-violence, naturally takes the foremost place in this movement and he embodies in his personality and life all that is noblest and best in India. In a sense, there has been a revolution but it was a spiritual, cultural, moral and psychological revolution and not a violent physical revolution that is taking place.

Thus recognising the realities of the situation created by the national agitation in India and the realisation of the futility of repression and force the Labour Government made an unequivocal declaration of their objectives and sent out in March, 1946, the Cabinet Mission consisting of Lord Pethick Lawrence, the India Secretary of State, Sir Stafford Cripps and Albert Victor Alexander. The Cabinet Mission, after several talks and negotiations with the representatives of India, in particular with the major political organisations, the Congress and the Muslim League, arrived at its own conclusions which were embodied in what is known as the Cabinet Mission's proposals issued by the Cabinet delegation and His Excellency the Viceroy Lord Wavell. While all the other parties in the country unanimously declared themselves in favour of Indian unity, the Muslim League put forward a scheme of partition of India and claimed the creation of the Pakistan Sovereign State.

The Cabinet Mission rejected the scheme of Pakistan as impracticable. It then proceeded to outline the method of establishing the new constitution. Pending the coming into being of a new constitution it also decided to constitute an Interim National government at the centre. The Mission adopted the standard machinery of a representative constituent assembly as the body for working out the new constitution. While they felt that the best course would be to call a constituent assembly elected on the basis of universal adult franchise they considered that such a revolutionary step would be impracticable in the immediate present and that it would lead to a wholly unacceptable delay in the formulation of the new constitution. Hence they proposed the utilisation of the newly elected Provincial Legislative assemblies as the electing bodies. They allotted to each Province a total number of seats proportional to its population, approximately in the ratio of one to a million. This Provisional allotment was to be shared between the main communities in the Province in proportion to their population and the representatives allotted to each community were to be elected by the members of that community in the Legislative Assembly. For this purpose, they recognised three main communities, the general, Muslim and Sikh, the general including all those who are not Muslims or Sikhs. The entire Provinces in British India are divided into three groups or sections. Section A comprises the Provinces of Madras, Bombay, United Provinces, Bihar, Central Provinces and Orissa. Section B comprises Punjab, N.W.F. Province and Sind. Section C comprises Bengal and Assam. The total number of seats fixed for the whole of India including the States and the Chief Commissioners' Provinces is 389. Out of this 292 is for British India, 93 for Indian States and 3 seats added to section A for Delhi, Ajmer, Merwara and Coorg and one added to section B for Baluchistan. There are 20 seats in A section for Muslims as against 167 general seats ; in section B there are 9 general seats, 22 Muslim seats and 4 Sikh seats ; and in section C there are 34 general seats and 36 Muslim



seats. The Indian States are allotted a maximum of 93 seats, the method of whose selection is to be decided by consultation. At the preliminary stage of the constituent assembly, the States are to be represented by a negotiating committee.

The constituent assembly composed as stated above should meet at Delhi. There is to be a preliminary meeting which would elect its President, and office-bearers and settle the general order of business. Thereafter certain Committees are to be set up for dealing with special subjects.

After this preliminary meeting, the delegates will divide up into sections A, B and C as noted above and these sections should settle their Provincial constitutions and also decide whether any group constitution should be set up and with what subjects. The Provinces are given the right to opt out of the group. Finally the representatives of the Provinces and the Indian States should reassemble for setting up the Union constitution. After the new constitution is drawn up, a treaty is to be concluded between the Union constituent assembly and the British government dealing with the transfer of power.

In accordance with this plan, delegates were elected to the constituent assembly. The Congress having accepted the plan, an Interim National Government was formed to carry on the administration during the transitional period. This task was entrusted to Pandit Jawaharlal Nehru who formed the cabinet with himself as the Vice-President, His Excellency the Viceroy being the formal President. The Interim Government took over the task of arranging the meeting of the newly chosen constituent assembly.

The Muslim League did not accept the new scheme. While there was a vague cry for Pakistan, the controversy mainly centred on the procedure to be adopted in the sections for framing the provincial and group constitutions. According to the League the Provinces had no option left in the matter of joining the group constitution and they could opt out only after their constitutions had been set up and formed in the sections. It was also contended that the simple rule of majority should govern the procedure in the sections in setting Provincial constitutions. A different interpretation was placed by the Congress in respect of these matters. According to this school of thought the Provinces cannot be compelled against their wish to join even initially any group constitution framed by the sections and they also declared that constitutions framed by the fiat of majority in the sections cannot be imposed upon them after manipulation by the majority Provinces. Assam was emphatic that in section C, she alone should have the right to frame her constitution and in fact she has been against joining Bengal in any group constitution. In the meanwhile, on the initiative of the Viceroy, the representatives of the League also joined the Interim Government. His Majesty's government invited the leaders to an emergent conference

at London on the eve of the constituent assembly which was scheduled to meet at Delhi on 9th December, 1946. The British Government issued another statement on 6th December, 1946, upholding the interpretation put by the League on the grouping plan in certain respects. On 9th December, 1946, the Union Constituent Assembly met at Delhi under the provisional chairmanship of Dr. Sachidananda Sinha. Except the Muslim League delegates, all other communities whole-heartedly joined this assembly. The League had not decided its course and was saying that the Congress had not accepted the grouping plan. The Chairman in his inaugural address surveyed the various constitutions of the world and struck the keynote that India can adopt the federal pattern of the United States of America adapting it to her own conditions and needs. This was the finest suggestion that can be thought of. Subsequently the Assembly chose its permanent President Dr. Rajendra Prasad, Food Member of the Interim Government and one of the most level-headed, self-sacrificing and noble type of statesman and patriot that the country has produced. The choice met with universal approval in the house and throughout the country. The assembly settled its own rules of procedure. The most important and solid contribution of this preliminary meeting was the resolution moved by Pandit Jawaharlal Nehru, declaring the broad objectives of the Constituent Assembly. These are the establishment of a united, independent and republican India. When this resolution was brought, Dr. M. R. Jayakar moved for the postponement of the consideration of this important question to enable the Muslim League representatives to come in and participate in the discussions. In deference to this opinion, the discussion was adjourned and the Assembly transacted certain minor business. Thereafter towards the end of December, 1946, the Assembly stood adjourned till 20th January, 1947.

In the meanwhile, the Congress passed a resolution accepting the Cabinet plan in its entirety including the grouping plan and advised the dissenting Provinces and the Sikh minority to go into the sections and assert their rights; but the League still kept quiet and showed no sign of co-operation. When the Constituent Assembly met again on 20th January, 1947, at Delhi to continue the work of the preliminary meeting, Dr. Jayakar withdrew his amendment, with the result that Pandit Nehru's resolution on the objectives was unanimously adopted by the House. The Assembly then proceeded with the task of constituting the various committees for dealing with subjects such as Tribal areas, rights of citizens, minority safeguards, etc., and then adjourned to meet again in April. The Assembly met accordingly on the 28th of April to consider the reports of the several committees and after a short session, it has been adjourned *sine die*.

After this, the Muslim League working committee met at Karachi and passed certain resolutions, refusing to believe the *bona fides* of

the Congress acceptance of the grouping plan, denounced the Congress, and called for the dissolution of the Constituent Assembly which it declared was an illegal body. The League made no constructive contribution to the solution of the deadlock except to insist on the right of the League dominated Provinces to dictate their own constitution for the minorities within their areas. The Sikhs, Assam and the N. W. F. Province do not accept this course. They claim their right to frame their own constitutions based on popular will. The Sikhs and the minorities, *i.e.*, the Hindus in Muslim dominated areas insist on adequate and effective safeguards for them. The weakness of the League stand is that it has to face the same minority forces and problems within Muslim populated regions just as in the All-Indian situation, the national government has to solve the Muslim minority problem. The League would require different solutions for these identical problems. While it would not trust the majority in the Indian Union, it insists on the minorities trusting it in the Muslim majority Provinces. It is to be hoped that a formula will somehow be devised to reconcile these divergent views and to bring about united action.

In this situation, deadlock continues in the Interim Government and Pandit Jawaharlal Nehru and Sardar Patel the Home Member gave public expression to it. As the League refused to enter the Constituent Assembly, in spite of the Congress acceptance of compromises and gestures of good-will, the continuance of the League members in the Interim Government was considered untenable. The Vice-President called for clarification of the situation from the British Cabinet. In response to this representation the Prime Minister, Clement Atlee presented a white paper on the future of India in the House of Commons on February 20, 1947. The white paper declared that the intention of the British Government was to effect the transference of all power to responsible Indian hands by a date not later than June 1948. It also declared that with regard to the States, paramountcy will not be transferred to any Government within British India. The British Government also declared their intention to strengthen the Interim Government for the transition period. The British Government further declared that in the event of an agreed constitution not being worked out in accordance with the Cabinet mission's plan by a united constituent assembly, they will have to consider to whom the powers of the Central Government in British India should be handed over on the due date, whether as a whole to some form of Central Government for British India, or in some areas to existing Provincial governments.

This statement is being interpreted by the parties in their own way. As Pandit Jawaharlal Nehru declared, the outstanding feature of the white paper is the decision of the British Government to transfer power by a fixed date and the taking of preparatory measures in advance for the said purpose. He characterised the statement as a wise and courageous one and as bringing a reality by removing all

misconceptions about Britain's intentions regarding transference of power. He appealed to all parties to close up their ranks and to join together in establishing a new constitution. He declared that the work of the Constituent Assembly must now be carried on with greater speed and invited afresh all those who kept aloof.

India is entering upon the most critical period of her history. She has to frame and establish a stable and progressive constitution for a united India of a lasting and endurable type, sufficiently elastic for change and at the same time based on solid foundations. The Federal form of Government is the only solution for all ills and dead-locks. It has been successfully adopted in the United States, Canada and Australia and its possibilities for adaptation to Indian conditions and to solve dead-locks are very great. It is comprehensive enough to yield sufficient formulas for solving political and constitutional dead-locks and tangles and to promote union. Confederation, *i.e.*, a mere league or union of sovereign and independent units with freedom to secede, meeting for common purposes as in conferences without a common organ of government having its own Legislature, Executive and Judiciary, will not do and has been demonstrated to be a thorough failure. The Swiss confederation before 1848, the Germanic confederation of 1815, the American confederation of the United States before 1787 under the Articles of Confederation, were all failures and discredited political experiments. Confederation is ineffective and not lasting. Its foundation lies in voluntary union based on momentary and fleeting issues. It will not be conducive to internal peace or progress or to ward off external danger and may result in a state of mutual warring elements. It is to be hoped that statesmen and leaders of all parties will concentrate their minds on the federal form of government for India as the best suited one. A unitary form of government on the British or South African model will be an ideal one but it may not have universal approval. Federation furnishes the ideal means for the distribution of powers and sovereignty and reconciling order with liberty. A strong federal centre for India is the *sine qua non* for the peace, progress and happiness of the teeming millions of India.

As the Cabinet Mission observed, the people should extend their vision beyond their community or interest to the whole four-hundred millions of Indian people. The following passage in which Alexander Hamilton presented the problem facing the thirteen colonies of the United States at the time of the Philadelphia convention, through the 'Federalist' is of world-wide significance and applies to India with equal force at the present juncture: "It has been frequently remarked that it seems to have been reserved to the people of this country by their conduct and example to decide the important question whether societies of men are really capable or not of establishing good government from reflection and choice or whether they are for ever destined to depend for their political constitutions on accident and force."



The Indian Constituent Assembly began its sittings with open doors. It has adopted a policy of publicity and not of secrecy and in this it preferred to follow the procedure adopted by the Australian conventions and differed from that of the American, Canadian and South African conventions in which a policy of strict secrecy was laid down, as the proper course suited to their conditions.

Whatever may be the changes that are likely to follow in the wake of the latest pronouncement of the British Government, the standard method of framing a new constitution by a constituent assembly has come to stay and the Indian Constituent Assembly has to overcome obstacles and difficulties and resolve the dead-locks and it is hoped that it will not disperse before erecting the future edifice of India based on solid and enduring foundations. The fathers of the future Indian constitution will have to labour hard and incessantly in the same way as the fathers of the American and Canadian constitutions in order to achieve their ends.

It is unfortunate that the difficulties of the Indian Constituent Assembly have been accentuated to-day by the persistence of the Muslim League in its demand for Pakistan which involves the cutting up of India into two Sovereign States one of which openly and avowedly will rest on a religious and communal basis. Division of India into different Independent Sovereign States is wholly wrong from every point of view. The creation of a united India is the only golden ideal for her citizens. The Indian National Congress and the Constituent Assembly are committed to this Ideal.

But the disorders and riots and the conditions of insecurity created by the separatist forces have led to sudden and unexpected political and constitutional developments in the Indian situation resulting in feverish and high-pitched activities in high quarters.

As foreshadowed above regarding the deadlock in the Indian situation, His Majesty's Government put forward a new plan on June 3, 1947, which envisaged the partition of India. According to this plan, in case the people of the areas which are now boycotting the existing Constituent Assembly do not wish to have their constitutions framed in this body, then a new and separate Constituent Assembly will be formed for them and power will be transferred to these two authorities if no single authority is established by agreement. Bengal and Punjab will also be partitioned after the wishes of the people are ascertained. Referendum is made applicable to the North-West Frontier Province and Sylhet district in Assam. The former is to decide which Constituent Assembly it will join, while the latter is to decide whether it will be in Assam or join East Bengal. An elaborate and detailed procedure is laid down for giving effect to the partition arrangements. The scheme is already in full swing.

These proposals have been regretfully accepted by the Congress and the Sikhs. The Muslim League though not fully satisfied, has also approved the same.

The important point which we have to note in this connection is the fact that there is no serious interruption in the work of the Indian Constituent Assembly which is free to go ahead with its great task. The new British plan has been accepted with a view to solve the terrible deadlock which produced grave disorders and chaos in the country and which if unarrested would have drifted further. It was out of practical considerations and with a view to respect the wishes of the people of such areas as did not like to come into the Indian Union and wanted to secede that this political adjustment has been accepted for the present, in the hope that this temporary parting might yet pave the way for a more lasting union ultimately. Opinion in the country and throughout the world is generally against partition. Mahatma Gandhi is opposed to partition. Even Pandit Nehru and Baldev Singh hope that this might not be a lasting and satisfactory one and that one day fusion would be brought about.

Since partition has now become a settled fact at any rate for the present, the best course for the country is to follow the noble sentiments and ideals preached by Mahatma Gandhi.

The majorities in the two States must vie with one another in treating the minorities in an ideal manner and these minorities should adjust themselves straightaway and feel themselves as citizens of the new State, entitled to every right. It is quite certain that geographical, economic, political and above all defence considerations will bring the two States within India into almost daily and hourly contact with each other and call for the supremest co-operation and unity, in the cause of the happiness of the teeming millions of this great country comprising both Hindus and Muslims who are living as neighbours and brothers throughout the land. The time may not be far when realising that instead of co-operating at every step and detail on matters of government, the two States will realise the expediency and effectiveness of once for all establishing one united, strong federal government for the whole of India. The lessons of history and the supreme necessities of the nation justify such a hope and faith in the future destiny of India. Until that happy hour arrives, it is the sacred duty of the statesmen and leaders as well as the citizens of the two States to foster a spirit of goodwill and harmony and to forge bonds of friendship and brotherhood, which will constitute the surest foundations of mutual happiness and progress. This will enable India to march forward and to take her place among the nations of the world.

Amidst this confusion it is also encouraging to note that many Indian States have come forward to join the Constituent Assembly and it is hoped that this movement will gain great momentum and all the Princes of India will ultimately join the Indian Union which is the only safe and straight path to be followed.

Here it must be pointed out that subsequent to the British plan for India announced on June 3, 1947, partitioning the country and

making fresh proposals in this direction, States like Travancore and Hyderabad have declared their intention to proclaim their independent status and their decision not to join the Indian Constituent Assembly. This has evoked a keen controversy on the question of the legality and constitutionality of the claim of the rulers to declare independence. Intimately connected with this problem is the issue as to whether sovereignty vests in the people or in the Princes. So far as the former claim is concerned, the vital issue of joining the Indian Union and the Indian Constituent Assembly cannot be decided by mere dialectical or legalistic arguments. The real factors which will be decisive are geographical, economic, political and cultural. High policy, expediency, wisdom and the welfare and progress of the States as well as of the whole of India undoubtedly point to the straight course of adhering to the Indian Union. After the Muslim League has left the Indian Union and the Constituent Assembly, it must be particularly noted that the conditions throughout the rest of India other than the proposed Pakistan are ideally favourable for the creation of even an efficient common unitary form of government on the model of the Union of South Africa. When such is the case, it will be the highest and noblest course for the States to take the inevitable and logical step of joining the Indian Union on the basis of federation, which will preserve their internal autonomy.

As regards the question of the vesting of sovereignty in the people, here again it is too late in the day for the rulers or their advisers to contend that it is not so. Quite apart from the purely legal aspect, it is heartening to note that the rulers and their advisers have themselves admitted the importance of basing their rule on the free and willing consent of their people. It is the people of the States who should decide the form of their constitution and the doctrines of democracy, sovereignty of the people and the natural and fundamental rights of men have now spread so far and deep throughout the world and particularly throughout our country, that it is extremely difficult for rulers to take shelter under mere legal and technical arguments, although even these are in favour of the rights of the people. It is to be hoped that the rulers and the people of the States will quickly come into line with the rest of India and make their great contribution to the building up of the strong and United India.

## UNITED NATIONS ORGANISATION.

### THE BIRTH OF THE UNITED NATIONS ORGANISATION.

A short account of the genesis of the United Nations Organisation will not be out of place in surveying the constituent assemblies of the world. Constituent assemblies are solely concerned with making constitutions. The United Nations Organisation is the first effective attempt at creating the basis of a World State. The constitution of the U. N. O. was drawn up for the governance of inter State relationships. It is a special machinery devised by a special body for the realisation of common aims amongst nations. Hence a knowledge of its origin, objectives, structure and functions will be of great value for all those interested in constitutional studies. Further the U. N. O. is sure to play an effective part in the foreign affairs of nations and even indirectly influence internal matters and the life of individuals and as such its study has a relevancy. It should also be noted that national sovereignty has to be reconciled with membership of the U. N. O. and the definition of the relationship of States with U. N. O. is of practical concern, as time passes on. The legal, constitutional and political effects and bearings flowing from the membership of U. N. O. will have to be considered. The States have to adjust themselves to the new situation created by the organisation of the United Nations. Hence no apology is needed for the inclusion of a chapter on this new World State constitution framed by an international body.

Prior to the nineteenth century international relations were governed by international law as expounded by jurists from the time of Grotius in the sixteenth century onwards. These rules and usages mainly concerned with regulating the conduct of warfare and peaceful settlements by diplomatic and consular methods. During the nineteenth century congresses, conferences and treaties constituted the chief machinery for dealing with disputes. There was no common organisation of an international character. After the first world war, there was a longing and emotional background for a definite international organisation to prevent war and to establish peace. In fact the war of 1914 was proclaimed as a war to end wars but it proved a fallacy. The League of Nations was founded for the purpose and it worked for twenty-five years but it also failed and the result was the last devastating second World War. The failure of the League was due to the fact that great powers like U. S. of America and Soviet Russia were not in it; the League was something outside the foreign policy of a nation; there were no sanctions to enforce common will; and there was a lack of timely co-operation to prevent



the spread of aggression. But this experience of the past has been of immense value to the present day statesmen. In spite of the League of Nations, power politics reigned supreme in the world and this led to war.

In the midst of the war in 1942, at Washington, twenty-six United Nations adopted what is now known as the Atlantic Charter—a declaration of rights by United Nations. It was a war-time alliance for the successful termination of the war. From this the idea of a permanent United Nations Organisation for peace developed. The next stage was the Moscow conference in 1943 at which Mr. Hull (America), Molotov (U. S. S. R.) and Mr. Eden (Great Britain) (China also joined) took a pledge for the creation of an effective international organisation. Then came the Dumbarton Oaks proposals, then Yalta conference leading to the San Francisco conference and finally the United Nations Charter in which fifty-one nations joined and which is now part of the Law of Nations. The success of the U. N. O. depends on the spirit with which it is worked.

### THE U. N. O. CHARTER.

The charter was drawn up on June 26, 1945, and is known as the San Francisco charter of the United Nations.

The preamble reaffirms the faith of the peoples of the United Nations in fundamental human rights, of equality and rights of men and women of all peoples and the desire for the establishment of international justice and law, and the promotion of social progress and better standards of life and the necessity for a machinery to realise these aims.

In Chapter I the purposes and principles of the United Nations Organisation are set out. They are: (1) Maintenance of international peace by means of collective measures through the U.N.O.; (2) Promotion of friendly relations by co-operation on the basis of equality and self-determination; (3) The promotion of social and economic well-being of all peoples and (4) Common action for common ends.

The primary organ of the U.N.O. is the Security Council which is to deal with disputes arising between States. It is its chief function, a difficult and delicate task. The great powers are entrusted with this particular task and they are given a dominating position. It is a wise course, for it is the big powers that really count in wars and the responsibility and burden has been squarely put upon them, of acting in harmonious co-operation. A complicated procedure is laid down for the settlement of international disputes. The scheme is based with a view to safeguard and respect the national sovereignty of the States as much as possible. In the first place, there must be a dispute or situation likely to create an international breach of peace. This must be settled by the parties amicably. Only then the jurisdiction of the Security Council comes in. The important point even then is that the dispute or situation must be of the type mentioned in the charter, *viz.*, one which is calculated to create a disturbance of international tranquillity and breach of peace. Only such questions can be taken cognisance of either on its own motion or otherwise. Another equally important point is that this jurisdiction can come into play only after the parties first on their own initiative have tried all means of conciliation to settle the disputes and solve by agreement. When the dispute or situation of the type referred to is put to the Security Council it can recommend procedures or itself decide the terms of settlement and even these are only of a recommendatory character. The Security Council can recommend or exhort. There is no legal duty cast on it to enforce the terms or a legal obligation on the part of States to act upon them. The formal declaration of the opinion of such a collective high tribunal has its own moral effect by way of universal pressure of public opinion which no State

can ignore lightly. Then there is a procedure for sanctions, which is an improvement upon the League of Nations. If the recalcitrant State persists as an aggressor and ignores the verdict, as a last resort, economic blockade and similar measures such as interruption of communications are to be enforced. Finally under Article 43, Chapter V, members of the U.N.O. have to enter into agreement or agreements regarding the use of armaments with the approval of peoples and are to make these forces whether of land or sea or air available for action. An elaborate procedure is laid down for enforcing the sanctions only as a last resort and that by agreement of all members.

Another important organ of the U.N.O. is the creation of the Economic and Social Council, also an improvement upon the League covenant. It consists of eighteen members elected by the General Assembly of the U.N.O. Its object is the promotion of the social and economic well-being of the peoples, the raising and betterment of standards of life, the safe-guard of fundamental human rights, the promotion of social, cultural, economic and educational progress of all peoples. This organisation is an important corollary to the ambitions of the U.N.O. The Economic and Social Council has to make and initiate studies and reports with respect to international economic, cultural, educational, health and related matters and make recommendations to the Assembly, the nation and peoples. Then there is the International Trusteeship system which replaces the old mandatory system for the administration of trust territories. A trusteeship council is created.

There is also the International Court of Justice, the principal judicial organ of the U.N.O. Each member undertakes to abide by its verdict in cases to which it is a party. The Security Council takes measures to give effect to the judgment. States are not bound to submit differences to the Court and they are at liberty to submit them to any other tribunal by agreement. It has power to give advisory opinion on any legal question submitted to it,—jurisdiction of an advisory and declaratory character.

The U.N.O. has appointed various commissions, most important being the commission to deal with Atomic discovery. The discovery of the Atomic bomb has further revolutionised the nature of international relations. The Atomic bomb and further scientific weapons that are yet to be discovered have placed before nations the alternatives of life or death as the only course to choose. If the former is to be saved and the latter is to be avoided, safety lies only in the international machinery devised by the U.N.O. based on co-operation. As was unanimously stressed in the opening speeches of the first assembly of the U.N.O. which commenced at London on January 9, 1946, it is not the organisation that matters but the spirit in which it is worked for common ends, that will really make it an effective instrument.

The provisions of the charter carefully preserve the sovereignty of the States and the whole basis of the edifice is voluntary agreements and concerted action. Membership of the U.N.O. affects the sovereignty of a nation in its foreign policy. It is put on a new footing. But in a liberal sense, there is no parting with sovereignty and such sacrifice as is involved is worth making, in the face of the alternatives of total sovereignty or total destruction. Modern war tends to be global. Peace is indivisible. War in one part leads to a total war. Science has knit together mankind into a close unit and the thousands of contacts afforded by it should be used for common benefit on a co-operative basis. The U.N.O. ushers a new epoch and constitutes the basis of a world State. It is not dictated by emotional idealism or utopian visions, or by immediate needs but by a real anxiety for the future on the part of all nations big and small.

Since its inception the U.N.O. had to deal with many questions, such as the Soviet complaint against the presence of British troops in Greece, the Lebanon question regarding French troops, the Indonesian situation, and Iranian petition against Russia. These questions raised the entire question of procedure and led to various interpretations. Most of them have been dealt with in the preliminary stage itself, leaving the matters in the hands of the parties themselves. The South African Union's racial discrimination policy against Asiatics is the latest instance. Mrs. Vijayalakshmi Pandit vindicated the position of India in a heroic manner and the U.N.O. has withstood the first test and has stood up for justice and equality. At the time when the San Francisco charter was drawn up, India was represented by the nominees of the then unrepresentative Indian Government, but since then, almost a revolution has taken place in Indian affairs and there is the Interim National Government headed by Pandit Jawaharlal Nehru, one of the world's great heroes and statesmen and one of the most cultured and catholic men of the present era. It is to be hoped that in the very near future a free, independent and United Indian republic will take her worthy share in the U.N.O. commensurate with her territorial size, population, and her culture, antiquity and civilisation.



## CONSTITUENT ASSEMBLY—SECRECY OR PUBLICITY.

Whether the Constituent Assembly should adopt a policy of secrecy *i.e.*, sit in camera or of publicity *i.e.*, sit in the open is one of the important questions relating to its procedure. Most of the important conventions of the past sat within closed doors. Probably this course was best suited to the particular conditions and circumstances of the times. The preponderance of opinion is in favour of secrecy. But how far this will appeal to the twentieth century mind which is nursed in the democratic traditions of publicity is a point for consideration. That the proceedings of a body which is to draw the constitution of a nation binding all posterity should be withheld from the public may appear to be shocking to this generation. So far as the Indian Constituent Assembly is concerned, its proceedings and debates at its preliminary Sessions held in December, 1946, and January, 1947, were in the open but for some minor matters of procedure and the publication of its high level debates had no doubt a thrilling, educative and ennobling effect upon the country. The Resolution on the objectives and the speeches on the same, constituted the most weighty and solid part of the work of the Indian Constituent Assembly at its preliminary meeting. The Assembly may have to decide with reference to particular subjects as to the feasibility of sitting in camera or in the open. The fears and suspicions which led the statesmen of the eighteenth century conventions to adopt a strict policy of secrecy may no longer be factors of importance. The public mind has become accustomed to thorough publicity and criticism and the procedure of openly discussing the pros and cons of every problem is a sound course. Both courses have their advantages and disadvantages and the question can be decided only with reference to the particular conditions of each country and the time-spirit. A historical survey of the procedure adopted in the conventions of the past will enable us to appreciate the course adopted by them.

The materials on this aspect of the activities of the conventions are very meagre. There are three main sources from which a knowledge of the proceedings of the conventions can be derived. In the first place, the official records, and journals kept and maintained by the convention itself constitute an important and authoritative matter. Secondly, wherever publicity was allowed, the contemporaneous reports of the happenings, debates and events of the convention in the press. Thirdly, notes and records taken, preserved and published by individual delegates of the convention, having an intimate personal knowledge of the work of the body.

In the convention of Philadelphia 1787, which drafted the Constitution of the United States of America, a policy of strict secrecy

was laid down regarding the entire proceedings from the commencement to the very end of its work, so that during the whole of the period of five months of the work of the convention, and long after, the public had no idea of the nature of the debates and the successive stages and processes by which final conclusions were reached. The final draft came to light when it was released for submission to the State Legislatures for ratification. The leaders of the American convention considered it important to protect the delegates from criticism and that their discussions should be free from the pressure of public opinion. It was thought that the convention being a body, far above local, sectional and partisan influences, and being charged with the task of drawing the constitution in a peaceable and leisurely manner and after mature deliberation, unfettered by any considerations and undisturbed by any outside influences, should sit within closed doors and function in complete freedom.

Historians have praised the wisdom of this course, as eminently suited for the successful solution of intricate, delicate and controversial problems of the convention. As observed by a writer "The reason for this secrecy is obvious ; it enabled the members to speak plainly, if they would ; it prevented tentative or vaguely formed proposals from going forth to the press ; it precluded the likelihood of prejudice or opposition based on incomplete evidence and it allowed the convention to present its conclusions." Thus secrecy has its virtues where acute controversial problems have to be dealt with. For instance, one of the main objections to the ratification of the draft constitution by the States was that the convention went beyond the terms of its reference and that the whole thing was void. Although the instructions to the convention restricted it to a mere revision of the Articles of Confederation, the delegates, boldly and wisely disregarded such narrow considerations and holding the view that the confederation cannot be mended but should be ended, drew up a wholly new constitution. If the proceedings of the convention had been exposed to view, an outcry of this nature from the public would probably have changed the course of policy or ended the convention in fiasco.

The rules of the convention laid down that no copy be taken of any entry on the journal during the sittings of the House without the leave of the House ; that members only be permitted to inspect the journal ; and that nothing spoken in the house shall be printed or otherwise published or communicated without leave. On May 29, 1787, these rules were first framed and read out at the convention. Sentries were posted without and within to prevent any person from approaching near. So scrupulously was the order for secrecy observed that it took several years for people to know definitely as to what took place at the convention.

Secrecy enabled the delegates to thrash out the questions from every point of view and controversial problems were debated and reopened half a dozen times again and again and this helped the

convention to reach compromises on the issues, which it would have been impossible to achieve if the proceedings had been open to hasty and unbalanced attacks at every stage. Feeling ran high in the convention itself and it was constantly on the breaking-point on many questions from the very start.

Another argument used in favour of the policy of secrecy was that once the country has chosen its delegates for the special task of framing the constitution, it should repose the fullest confidence and trust in them and it was not necessary to watch, criticise and guide at every stage. While the American convention sat within closed doors, there were no doubt wild rumours outside as regards what was happening inside and all sorts of alarms and ideas were raised but all this was hushed in the end by the splendid result achieved by the convention. The country reposed the greatest confidence in the delegates, and patiently awaited the final result. When the constitution was submitted for ratification, although there was opposition to it, on the whole it met with praise and approval and the constitution which was the product of this convention has been hailed as the model for the rest of mankind.

There could be no appeal to the gallery on the part of the delegates at the convention under a policy of secrecy. The delegates need not look back at every step to the public and to their supporters and admirers as to the kind of reaction upon their speeches and doings in the convention. Such were the weighty reasons adduced for the policy of secrecy. Although there was no racial conflict in the United States of America, still there were acute and bitter controversies giving rise to passion, hatred and jealousies, amongst the thirteen colonies. State patriotism and isolation was strong and centripetal and centrifugal forces were arrayed in battle contending for mastery. There was bitter antagonism between the larger and smaller States and over the question of slavery and other economic issues. All these justified, according to historians the policy of secrecy adopted by the American convention.

After the American convention had finished the final draft and before it adjourned, the Secretary was directed to deposit the journals and other papers of the convention into the hands of the President. The President was asked to retain the journal of the convention and other papers subject to the order of the Congress if established under the constitution. Accordingly the Secretary of the convention, William Jackson, destroyed all the loose scraps of papers which he thought unimportant and formally handed over the papers to the President. George Washington deposited the papers with the Department of State in 1796, where they remained untouched till 1818, when the Congress by a joint session ordered them to be printed and these are now in the library of that department.

The journal contained only minutes of the proceedings but no regular record of the whole proceedings and debates. During the Presidency of Munroe, the Secretary of State of the United States of America was directed to publish the journal for the benefit of the public. With great difficulty and chiefly with the aid of the notes taken by Madison at the convention the Journal, Acts and proceedings of the historic Convention of Philadelphia were published in 1819. The compilation and editing of these records was a hard task. When the seal of secrecy was broken, Robert Yates an ex-Chief Justice of New York and a delegate of the convention, who walked out of it in July in the middle of its work due to violent disagreement, published the notes taken by him up to July, as "Secret proceedings and debates of the Convention of Philadelphia."

But the most important and reliable source of the proceedings of the convention is found in Madison's notes. Madison, one of the greatest of statesmen and a delegate who played a conspicuous part in the convention, took full and careful notes of the entire proceedings. He himself stated later on how he took an advantageous seat in front of the President with delegates to his right and left and how at the sacrifice of comfort and health, he took notes of the proceedings and the debates. While alive, he refused to bring them out and preferred a posthumous publication. Then notes of other delegates came to light but these faded into insignificance before Madison's record. At the convention itself, Madison was regarded as a semi-official reporter, and delegates supplied him with their speeches and motions. Thus Madison's notes constitute the standard authority for the proceedings of the American convention.

Among other notes of delegates there was one, Rufus King's notes on odds and ends. Hamilton a leading figure of the convention had also some notes made. The printed documents used by the final committee of detail in the convention also form an important material. There was another interesting source of light upon the proceedings of the convention. When the draft constitution came up before the States for ratification, references were made to the speeches and proceedings of the convention in order to explain the acts and intent of the convention on particular topics. Such references are found in the private correspondence of the delegates, in the contribution and correspondence in the press, in public speeches, in the debates in the State Legislatures and in the congress. This supplementary material throws much light on the part played by leading personalities in the convention.

Canadian Constituent Assembly, *viz.*, the Quebec convention 1867, which was the first one within the British empire to frame a constitution followed the example of the American convention and sat within closed doors. In Canada there were acute provincial jealousies especially between the Maritime Provinces and Canada and more important than this, there was bitter and age-long racial conflict



between the English and the French, in Canada proper itself. At the opening of the convention at Quebec, correspondents representing Canadian, British and American newspapers assembled there to report the proceedings of the convention. They sent a memorial for facilities but the Secretary declined stating that no communication of the proceedings of the convention could be made till the delegates were enabled definitely to report the issue of their deliberations to the Governments of their respective provinces. Mr. Kennedy vividly describes the situation "Men's hearts almost failed them because of fears. It is only possible to imagine the heated discussions, the clash of interests, the balancings of hope and despair, when behind closed doors strong men tried to crush down passion with the hands of creative faith. Joy came at length in the morning. In less than eighteen days, seventy two resolutions were agreed on, which practically became the British North America Act of 1867 and the Quebec Conference gave not only a constitution to the colonies but an example and an inspiration to States yet unborn within the Empire." One of the chief arguments urged, in favour of secrecy was that publicity would induce fresh and new fierce agitation and imperil chances of compromise but that once the measure is passed the people would become reconciled to it.

The Quebec convention left no regular official record of its proceedings. A number of documents edited by Joseph Pope, the biographer of Macdonald, the leading architect of the convention, in 1895, and who had access to some of the convention papers constitute the main source of knowledge of its activities. Mr. Pope's publication is based on fragmentary notes of the convention proceedings taken by its Secretary.

The South African convention which drafted the unitary constitution of the South African Union in 1908 also sat within closed doors. This was considered to be a wise course because the questions that had to be handled were so delicate and the feeling in the country was so keen and discordant that it was not conceivable that an agreement could have been reached in public. There was bitter racial conflict in South Africa between the English and the Dutch which had culminated in the Boer War, apart from many economic, and fiscal and railway rates questions. The public had to wait and pass its judgment on the completed result. One of the chief sources of knowledge of the convention and its work is the publication of a book entitled 'The Union of South Africa' in 1909 by R. H. Brand, the Secretary of the Transvaal delegates in the convention.

The position with regard to the Constituent Assembly which drew up the Australian Federal Commonwealth is different. Unlike U. S. of America, Canada and South Africa, the Australian convention rejected a policy of secrecy and adopted a policy of full publicity. There were two conventions one in 1891 in Sydney and the other in 1897 which sat at Adelaide. The draft constitution made in 1891

was the basis for discussion in the convention of 1897 and it was this draft which became ultimately the Commonwealth Act, 1900. The draft constitution of the first convention was not accepted and approved for various reasons and Australia had to wait till 1897 as the more propitious time for popular acceptance of the very same draft of 1891. It is unnecessary to go into the history of this development.

The convention of Sydney, 1891, decided that it should sit with open doors. The press and the public were admitted to the convention, unless ordered otherwise. The temper of the discussions was more radical than in Philadelphia or Quebec.

One of the criticisms levelled against this policy of publicity was that as a result of this wrong course, the swift approval and enactment of the Commonwealth Constitution was delayed, as the controversies and doubts, suspicions and local jealousies were kept alive by public comment, with the result that the issue of federation was indefinitely postponed owing to vacillation and doubt. Another view is that publicity has its value for future guidance and the temporary failure of the convention of 1891 lay in the fact that Australia was not yet ripe for federation and that Australian nationalism had not yet developed and that the ground was ready only in 1897.

It must be remembered that the policy of publicity was best suited to the particular conditions of Australia. Australia was a homogeneous nation. The whole white population which counted, was of pure British descent and there was absolutely no sort of racial or similar conflict to be faced. There was a common interest and Australia's defences demanded a strong federation. The differences between the colonies were of a minor character. Again in Australia, the labour party, representing the artisans and workers of towns, was becoming powerful and labour sentiment was very strong. The radical elements in political life were predominant, claiming the democratic rights of Englishmen and English traditions, to which they aspired. No racial conflict existed as in the case of South Africa or Canada.

In Ireland, before a final draft constitution was submitted to the Constituent Assembly for approval, a number of drafts were prepared by a constitutional committee appointed by the provisional government in 1922. Four drafts were prepared and out of these a final agreed draft was placed before the Constituent Assembly for consideration. The first four drafts were never made available to the public and they were prepared in privacy. Only the last one was published and this was the one which was passed as the Constitution Bill in the Assembly.

In the German constitution drawn up by the Weimar Constituent Assembly in 1919 after the first world war, some drafts were published and some were withheld. There appears to have been a policy of partial secrecy. The final draft submitted to the Assembly

was put before the public. With regard to the German constitution, one thing is however evident. A flood of literature in the shape of pamphlets and books was let loose upon the land, making all sorts of suggestions, with the result that a mass of details and various points of view were incorporated in the constitution. But the constitution document, became the longest, the most prolix and detailed one among the constitutions and this was considered one of its chief defects.

#### DECLARATION OF FUNDAMENTAL RIGHTS OF MEN.\*

One of the very first questions which the Constituent Assembly of India will have to decide is the embodiment of a Declaration of Fundamental rights in the new constitution. Such a demand was made by Indians before the Constitution Act of 1935 was enacted but it was rejected by Parliament as useless and impracticable. The All-parties Conference, 1928, recommended it and the Indian National Congress of 1933, laid down a declaration of rights and duties. All organisations in the country are agreed on this.

A brief survey of the evolution of this doctrine and its features as revealed in the various constitutions of Europe and America will enable us to appreciate its full significance and value. The object of a declaration of rights of man is to protect and safeguard the rights of the citizen against the State. Historically it was put forward against monarchical despotism but soon it was realised, that whatever the form of State, there was need for similar protection against infringements of these rights by Governments. The contents of the doctrine often varied owing to the special needs of the age but there has always been a consensus of opinion as regards the basic rights of man, described by the thinkers of the Revolutionary age as sacred, natural, imprescriptible and inalienable, such as the right of sovereignty of the people, freedom of thought and opinion, freedom of speech, right of association, the right of resistance to misrule, the right to bear arms, the right to personal freedom, freedom of religious belief, the inviolability of person and property and above all the most important of such rights, equality before the law. According to Professor Laski our natural rights will have a changing content, simply because this is not a static world.

The doctrine of the Rights of man is generally associated with the French Revolution. But before this there have been declarations and Bills of rights embodied in the various State-constitutions of the United States of America, which influenced French thought. In England there is no formal declaration of rights. It is true that the Magna Carta, the Petition of Right (1628) and the Bill of Rights (1689) and other notable Acts of Parliament, contain affirmations of such rights and these documents exercised great influence in France and America in the evolution of the doctrine. In these historic documents, the principles of government and the rights of man are often thrown together and have to be distinguished. The British mind has always been averse to such formal declarations of abstract rights. Although the Magna Carta became an authority and the political Bible of the Englishmen in later times, at the time it was drawn up there was

\* Published by the courtesy of the Editor of *The Hindu*.



little thought of the future ; just enough law was stated to meet the present emergency. It was a kind of treaty with King John. The Magna Carta and the Bill of Rights were wrested from the King and they were not the products of revolutionary idealism or of any abstract assertion of the natural right of man. The English parliamentary mind appealed to the force of historical rights.

The doctrine of the Rights of man is the outcome of the philosophy of the eighteenth century which gave rise to the ideal of natural rights of man everywhere. The influence of the English revolution, the writings of Locke and Montesquieu, the growth of Calvinism and Puritanism with their appeal to individual conscience and reason, and above all the profound influence of the theory of 'Social Compact' propounded by Rousseau,—all these contributed to the birth of the doctrine of Rights of man and this marked one of the turning points in the history of human progress. In America, at first the colonies in their fight against England based their rights on the customary and traditional rights of British subject. They referred to the undoubted right of Englishmen that no taxes should be levied without their consent. This was in the spirit of the English Bill of Rights, 1689. But in the declaration of rights of the Philadelphia Congress of 1774 appeal is made not only to the principles but also to the immutable law of nature. In the American Declaration 1776, nothing is said about the rights of British subjects and the doctrine of natural rights of man is stated in imperishable language in the opening sentences of the declaration which forms the most cherished creed of American people. "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are Life, Liberty and the pursuit of happiness." When the colonies were transmuted into commonwealth and incorporated declaration of rights in their constitutions 'they moved from the dust of parchments to the eternal laws of nature' ; from antiquity and traditionalism to natural rights. In the American constitution itself which was drawn up by the Philadelphia Convention, 1787, there is no declaration of rights; this was one of the main grounds of opposition to its ratification by the States, but this was explained by the fact that as the constitution of the U. S. of America was a close union of sovereign States, the appropriate place for embodying the rights was not in the federal constitution but in the State-constitution. Further the objection was met later by the first ten amendments made in the constitution affirming similar rights.

The principles of the French Revolution were embodied in the famous Declaration of the rights of man and citizen which was prefixed to the constitution which was promulgated in 1791. This forms the distinctive and peculiar creed of the French Revolution, a declaration of principles for the first and for all time on which her constitution is founded. "Men are born and remain free and equal in their rights". The French put in succinct form the diffused declarations of the American States. In France it moulded and

influenced the French constitution in the same way as the declaration of Independence in America and acted as the symbol and focus of human rights.

In the nineteenth and twentieth centuries the constitutions drawn up in European countries embodied in them Declarations of Rights. Owing to the revolution caused by scientific inventions and the growth of socialism and collectivism, there were modifications and additions to the contents of the doctrine suited to the needs of the age.

The rights of the working classes sprang into prominence in men's minds. The Russian Bolsheviks, although they criticised the French and other declarations, themselves issued in 1918 a Declaration of the Rights of workers and exploited peoples. The U. S. S. R. constitution established in 1936 lays down its "Fundamental Rights and obligations of citizens" in Chapter X. This declaration although less rhetorical than those of the Revolutionary age of France and America, is more practical and utilitarian, intimately touching the masses. In this as well as in the declaration of rights embodied in the German Weimar constitution there is a declaration of duties of the citizen alongside his rights. The German declaration is most typical in this respect and as an instance may be noted the provision regarding the rearing of children: "The rearing of the rising generation in physical, mental and social efficiency is the highest duty and natural right of the parents the accomplishment of which is watched over by the community of the state." The U.S.S.R. declaration contains the duties of the citizen also. It is a charter of the rights and duties of workers and peasants and differs from the orthodox declaration of rights in a refreshing manner. Right to toil and to wages according to quality and quantity, equality, right of assemblage, right of street procession and public demonstration, the duties of defending the fatherland, the inviolability of private residence are amongst the matters included.

Reference may also be made to the nature of the provisions in the fundamental rights included in the Irish constitution established in 1922. Owing to historical experience and the long reign of repressive laws in the country, Ireland felt the need for the inclusion of special legal safeguards for the protection of the individual liberty in the organic law of the new State. It was felt that there was a case for such fundamental insistence on the sacrosanctity of personal freedom in order to emphasise the reality of the new liberty and to mark the end of its infringement. "Liberty of person is inviolable." There are special provisions against martial law, for religious liberty, the inviolability of dwelling, freedom of expression and association.

As regards the value to be attached to the declarations of rights in constitutions, it has been a matter of controversy. There was a regular battle of wits between Edmund Burke and Sir Thomas Paine over the French Declaration of Rights. Burke and Bentham

denounced the doctrine as harmful, inexpedient and bad politics, and that its adoption would lead to anarchy. According to this school of thought the rights of man is drawn up for an abstract pattern made by metaphysicians. Sir Thomas Paine in his Rights of Man vigorously defended it on the ground that the historical circumstances of tyranny and oppression justified formal assertions to protect the citizen. Others have described it as a necessary symbol and focus of man's rights, a Bible of the poor and the title-deeds of the human race, and that the principles underlying it have a living message for all time. These are universal ideals which may not be realised but it is wise to assert them especially in countries struggling for liberty. Abraham Lincoln put a liberal interpretation on it and in his opinion these declarations are meant to set up a standard maxim for free society, to be constantly thought of, approximated to and realised. The application of the rights depends however on time, place and circumstances and not on *a priori* solutions. It was also stated that the doctrine emphasises rights and not duties. Sir Thomas Paine answered "A declaration of rights is by reciprocity a declaration of duties also". However, this objection is met in modern constitutions by the enumeration of duties as well, as noted before. The formal enumeration of the rights has been held to be the first step in safe-guarding them.

It has also been pointed out that in the absence of judicial review, there is difficulty in securing these rights as is the case in most European constitutions. In the United States of America by the device of judicial review under which courts are empowered to declare null and void any law repugnant to the constitution these rights are effectively secured.

There is no doubt that the doctrine has exercised great moral influence in Europe and America and got a firm hold on men's minds as is seen even in the case of the U.S.S.R. constitution.

The conditions of India are such as to make out a clear case for the incorporation of a declaration of rights and duties in our constitution. India is still a nation struggling for national and political liberty. The social and economic conditions of the country satisfy the adoption of such a provision. The existence of caste, the growth of separatist tendencies and above all the problem of the untouchables with all their age-long social disabilities, are factors to be taken into consideration. The emancipation of these depressed classes compels the need for a formal declaration of their elementary right in equality with others. Another feature is the existence of a number of religious and linguistic minorities like the Moslems, the Sikhs, the Christians, etc., requiring safeguards and protection and one of the best ways of securing the full enjoyment of religious and communal rights is to include them among the basic principles of the constitution. The cause of the elevation of women and their equal rights have to be considered above all. India is a land of

peasant workers and their rights have to be declared and protected. In such circumstances, the embodiment of a comprehensive list of rights and duties in the constitution will operate as a unifying force upon the nation.

The case for a Declaration of Rights was thus summed up before the joint Parliamentary Committee by Sir Tej Bahadur Sapru. "In the peculiar circumstances of India and particularly with a view to give a sense of security to the minorities and the depressed classes it is necessary that too much emphasis should not be laid on the orthodox British legal point of view regarding Fundamental rights but some of them should find a place in the statute itself."



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